

**A G E N D A**  
**JAMES CITY COUNTY ECONOMIC DEVELOPMENT AUTHORITY**  
**REGULAR MEETING**  
**101 D Mounts Bay Road, Williamsburg, VA 23185**  
**July 12, 2018**  
**8:00 AM**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. APPROVAL OF MINUTES**

1. Minutes Adoption

**D. FINANCIAL REPORTS**

1. June 2018 Financial Reports

**E. CLOSED SESSION**

**F. NEW BUSINESS**

1. Billsburg Brewery Lease Update

**G. OLD BUSINESS**

1. Bond Policy Documents
2. Bylaws Discussion

**H. LIAISON REPORTS**

1. Real Estate Holdings Committee - JRCC Update

**I. DIRECTOR'S REPORT**

1. Director's Report - July 2018

**J. UPCOMING DATES OF INTEREST**

1. July 25th at 12 p.m. - GWP Board Meeting
2. July 25th at 3 p.m. - Ribbon Cutting for Commercial Kitchen Space at Virginia Gourmet
3. August 3rd at 10 a.m. - Ribbon Cutting for the Presidents Pavilion at Patriots Colony

**K. ADJOURNMENT**

1. Adjourn until 8 a.m. on August 9, 2018 for the Regular Meeting

**ITEM SUMMARY**

DATE: 7/12/2018

TO: The Economic Development Authority

FROM: Teresa J. Fellows, EDA Recording Secretary

SUBJECT: Minutes Adoption

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**ATTACHMENTS:**

	Description	Type
☐	101217EDA Minutes	Minutes
☐	061418EDA Minutes	Minutes

**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Jordan, Amy	Approved	7/9/2018 - 2:51 PM
Publication Management	Daniel, Martha	Approved	7/9/2018 - 3:08 PM
Economic Development Authority Clerk	Fellows, Teresa	Approved	7/9/2018 - 3:10 PM

**MINUTES**  
**JAMES CITY COUNTY ECONOMIC DEVELOPMENT AUTHORITY**  
**REGULAR MEETING**  
**101 D Mounts Bay Road, Williamsburg, VA 23185**  
**October 12, 2017**  
**8:00 AM**

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**A. CALL TO ORDER**

**B. ROLL CALL**

Paul W. Gerhardt  
Robin Bledsoe  
Rick Shippey  
Christopher J. Odle  
Marshall N. Warner  
Robin D. Carson, Vice Chairman  
Thomas G. Tingle, Chairman

**Also Present**

Amy Jordan, EDA Secretary  
Teresa Fellows, EDA Recording Secretary  
Stephanie Lahr, EDA Fiscal Agent  
Maxwell Hlavin, EDA Legal Counsel  
Jenni Tomes, EDA Treasurer  
Christopher Johnson, Ombudsman  
Kate Sipes, Assistant Director, Economic Development  
Ruth Larson, Board of Supervisors Liaison

**C. APPROVAL OF MINUTES**

1. **Minutes Adoption**

A motion to Approve was made by Paul Gerhardt, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Carson, Gerhardt, Odle, Warner, Bledsoe, Shippey, Tingle

**D. FINANCIAL REPORTS**

1. **September Financial Reports**

A motion to Approve was made by Robin Carson, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Carson, Gerhardt, Odle, Warner, Bledsoe, Shippey, Tingle

Ms. Lahr addressed the Authority giving an overview of the reports included in the Agenda Packet.

## **E. CLOSED SESSION**

1. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of their interest in locating or expanding in the community, pursuant to Section 2.2-3711 (A)(5) of the Code of Virginia

A motion to Enter a Closed Session was made by Thomas Tingle, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 2 ABSENT: 0

Ayes: Carson, Odle, Bledsoe, Shippey, Tingle

Abstain: Gerhardt, Warner

Mr. Gerhardt and Mr. Warner abstained from participating in the Closed Session, citing a conflict of interest as they both have business relationships with one of the principals of the business being discussed.

At 8:32 a.m., the Authority entered into Closed Session.

At 9:00 a.m., the Authority reentered Open Session.

2. Closed Session Certification

A motion to Certify the Closed Session was made by Thomas Tingle, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 2 ABSENT: 0

Ayes: Carson, Odle, Bledsoe, Shippey, Tingle

Abstain: Gerhardt, Warner

## **F. NEW BUSINESS**

1. Launchpad Update, Tim Ryan

Mr. Tim Ryan, Director of Launchpad - The Greater Williamsburg Incubator, addressed the Authority giving an update on the business incubator that is jointly funded by the Authority, the City of Williamsburg Economic Development Authority, and York County Economic Development Authority. He highlighted the services offered by Launchpad, the office space available, and the mentorship available. He noted that is a much larger small business component in the Launchpad more so than start-ups, which is different than the original expectation. He noted the numerous monthly events that cover everything from using Quickbooks to legal issues that every small business should know. He highlighted the working relationship with the College of William & Mary and Thomas Nelson Community College. He stated that rent and membership revenue continues to grow. There are currently two offices available in the Launchpad.

The Authority asked some general questions about policies for graduation, reporting out metrics and oversight by the Board of Directors.

Mr. Ryan stated that an Annual Report is distributed at the end of the fiscal year which covers all of the reporting metrics for the year.

Ms. Julie Sums, Chair of the Launchpad Board of Directors, stated that the Board is actively setting more administrative policies in place to provide more structure.



Also, the Launchpad falls under the umbrella of the Greater Williamsburg Partnership.

Mr. Ryan highlighted the collaborative nature of the space. Many of the tenants were working out of their homes to launch their businesses, and the Launchpad space provides them access to networking, collaboration and services that they would not have available. He thanked the Authority for its continued support.

2. 2018 LPGA Sponsorship Package Approval

A motion to Approve was made by Marshall Warner, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Carson, Gerhardt, Odle, Warner, Bledsoe, Shippey, Tingle

Ms. Fellows addressed the Authority giving an overview of the Sponsorship Package included in the Agenda Packet.

Ms. Jordan highlighted the increased numbers of "Inside the Ropes Experience" opportunities. She also stated that the invite list would get revised to bring in some new people and create opportunities and relationships with commercial brokers and highlight the County.

3. Amend EDA Calendar (change of location and time for EDA retreat)

A motion to Approve was made by Robin Carson, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Carson, Gerhardt, Odle, Warner, Bledsoe, Shippey, Tingle

Ms. Jordan stated that the EDA Retreat would take place in the conference room at Freedom Park at 8:30 a.m. on December 14, 2017.

4. Unmanned Systems – GO Virginia Proposal

Ms. Jordan addressed the Authority reviewing the GO Virginia Proposal that was included in the Agenda Packet. She stated that Unmanned Systems have been identified as a priority emerging cluster in the recently released Go Virginia Region 5 Growth and Diversification Plan. This cluster was supported by significant Hampton Roads assets including NASA Langley Research Center, National Institute of Aerospace, ReAKTOR (Peninsula Technology Incubator) and the Virginia Institute of Marine Science at the College of William & Mary. Existing unmanned system companies in the region have identified the lack of a testing and demonstration area, in proximity to their locations, as one of the most significant impediments to growing their businesses. A convenient demonstration area was particularly important to businesses in this sector that are selling, or transitioning to selling to the commercial market.

The former Virginia Emergency Fuel Storage Facility (Fuel Farm) property is approximately 462 acres, and it is located between Penniman Road, Colonial Parkway and the Yorktown Naval Weapons Station. The site is centrally located on the Peninsula and is less than two miles from the I-64 Exit 242 (Water Country Exit). The site is currently owned by the Commonwealth of Virginia and is

designated as surplus land.

The overarching concept is establishing a facility that is open for any company to develop, test or demonstrate unmanned systems. There is adequate space for land and air vehicles and access to King's Creek for water vehicles. The testing and demonstration area would be located on approximately 192 acres of the property. The remaining undeveloped 241 acres could be established as a light industrial park, with flex space, for unmanned systems companies and related businesses.

Mr. Tingle highlighted the work done by the Peninsula Economic Development Directors in getting this project proposal put together. He said it was a testament to regionalism.

Mr. Tingle asked if a letter of support could be drafted subject to the approval of the Board of Supervisors.

Ms. Jordan stated yes, the Board would be briefed on the proposal at its Work Session later this month.

## **G. OLD BUSINESS**

## **H. LIAISON REPORTS**

### **1. BOS Liaison**

Ms. Larson gave the Authority an update on items that had come before the Board of Supervisors. She thanked Ms. Jordan for her hard work in providing industrial site tours for the Board members.

### **2. Greater Williamsburg Chamber & Tourism Alliance**

Mr. Shippey stated that the next meeting is next week, so he will have information to report at the next EDA meeting.

### **3. Planning Commission**

Mr. Tingle noted that the Planning Commission (PC) Liaison position is open with the departure of Mr. Harris.

Ms. Bledsoe asked for clarification on the role of the PC Liaison. She stated that she would be willing to fill the role, but would like further clarification on what she should be doing.

Mr. Tingle suggested that Ms. Jordan could follow up with Ms. Bledsoe.

### **4. Greater Williamsburg Partnership**

Mr. Tingle noted that most of his report about the GWP was covered by Ms. Jordan's GOVirginia report and in her Director's Report.

### **5. JRCC Architectural Review Board**

No update.

6. Real Estate Holdings

Mr. Odle gave an update on the most recent Real Estate Holdings Committee meeting. He stated that the Committee met with Planning and Parks and Recreation staff about improvements at the Marina Property and discussed the bigger picture and plan for the site. The EDA-owned parcel was briefly discussed with much of the focus being on whether or not to just continue improving the site readiness or if constructing a shell building is an option that should be explored.

Mr. Tingle stated that Mr. Gerhardt had asked to step down from the Committee and he recommended that Ms. Bledsoe take Mr. Gerhardt's place.

7. Finance

No update.

**I. DIRECTOR'S REPORT**

1. October Director's Report

Ms. Jordan addressed the Authority giving an overview of the Director's Report included in the Agenda Packet. She also noted the following Upcoming Dates to Remember:

- Peninsula Workforce Development Council Annual Meeting, Oct. 16, Williamsburg Winery
- Virginia Chamber 69th Virginia Conference on World Trade, Oct. 17-18, Williamsburg Lodge
- Billsburg Brewery Grand Opening, tentative Oct. 20
- Homebased Business Workshop, Oct. 20, 8 a.m.-4:30 p.m., Stryker Center
- College of William & Mary Homecoming Alumni event, Oct. 21, Cohen Career Center Rooftop Patio
- Celebration of Business, Nov. 2, Jamestown Settlement START Peninsula, Nov. 3-5, Stryker Building
- Virginia Chamber 8th Annual Virginia Economic Summit, Dec. 1, Williamsburg Lodge
- EDA Retreat, Dec. 14, 8:30 a.m.-noon, Freedom Park

**J. ADJOURNMENT**

1. Adjourn until 8 a.m. on November 9, 2017 for the Regular Meeting

A motion to Adjourn was made by Christopher Odle, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Carson, Gerhardt, Odle, Warner, Bledsoe, Shippey, Tingle

At 10:06 a.m., Mr. Tingle adjourned the Authority.

**MINUTES**  
**JAMES CITY COUNTY ECONOMIC DEVELOPMENT AUTHORITY**  
**REGULAR MEETING**  
**101 D Mounts Bay Road, Williamsburg, VA 23185**  
**June 14, 2018**  
**8:00 AM**

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**A. CALL TO ORDER**

**B. ROLL CALL**

Robin D. Carson  
Rick Shippey  
Christopher J. Odle - Absent  
Thomas G. Tingle  
Robin Bledsoe, Vice Chair  
Marshall N. Warner, Chairman

Amy B. Jordan, EDA Secretary  
Teresa J. Fellows, EDA Recording Secretary  
Maxwell Hlavin, EDA Legal Counsel  
Stephanie Lahr, EDA Fiscal Agent  
Kate Sipes, Assistant Director, Economic Development  
Suzanne R. Mellen, Director, Financial and Management Services  
William C. Porter, Interim County Administrator  
David Denny, Executive Director, Greater Williamsburg Partnership  
P. Sue Sadler, Board of Supervisors Liaison to the Economic Development Authority

**C. APPROVAL OF MINUTES**

1. Minutes Adoption - May 10, 2018 Meeting

A motion to Approve was made by Robin Bledsoe, the motion result was Passed. AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1  
Ayes: Bledsoe, Carson, Shippey, Tingle, Warner  
Absent: Odle

**D. FINANCIAL REPORTS**

1. May Financial Reports

A motion to Approve was made by Thomas Tingle, the motion result was Passed. AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1  
Ayes: Bledsoe, Carson, Shippey, Tingle, Warner  
Absent: Odle

Ms. Lahr addressed the Authority giving an overview of the financial documents included in the Agenda Packet.

## **E. CLOSED SESSION**

## **F. NEW BUSINESS**

### **1. Pegasus Partners**

Ms. Jordan addressed the Authority giving an overview of the consulting group, Pegasus Partners, who work to attract Middelstand businesses from Germany, Austria and other areas of Europe. Middelstand businesses are small- to medium-sized family owned businesses that has showed a particular interest in locating United States operations in our area. Ms. Jordan turned the briefing over to Mr. David Denny, Executive Director of the Greater Williamsburg Partnership (GWP), and to Mr. Tingle as the Chair of the GWP Board.

Mr. Tingle apologized for this funding request coming outside the normal budget cycle. He stated that he wanted to address the questions raised by Ms. Bledsoe. The request is drafted as a three-year proposal; however, the intent is to authorize and commit one year at a time. The future funding for future years would come as budget requests during the normal budget cycles. The other question was why commit to this proposal before going through the process of hiring the new GWP Executive Director. Mr. Tingle stated that the feeling of the three Economic Development directors is that the GWP needs to keep the momentum going and move along the opportunity to work with this company. The hiring of a new GWP Director is expected to occur by October 1, but realistically it would be the first quarter of next year before that new director is up to speed on the area and the assets. While there is no immediate urgency to move on this item, the feeling was that they didn't want to wait six months.

Ms. Bledsoe said that in her professional experience, the new director should come in and get set up and then they could be the one to launch this idea as the next best and greatest thing for our area. She stated that it makes more sense to wait.

Mr. Denny gave an overview of the proposal included in the Agenda Packet. He stated that these Middelstand businesses fit very well with our region's current product and future plans, and they also fit very well with the educational and training component that we have here with the College of William and Mary and Thomas Nelson Community College. He stated that these businesses do not make quick decisions about where to locate, but once they do, they are very loyal. He stated that developing this proposal has been ongoing for several months. The consultants have come to the region to do an assessment and provided a scorecard; and the GWP asked that the company be thoroughly vetted which has been completed. Mr. Denny briefly reviewed the experience and background of the individual consultants that work for Pegasus Partners and what they bring to the table.

Mr. Tingle stated that this is a long play in the economic development game. This is really about building relationships that will help and influence those prospects down the road. These companies are going to reach out to people they know when they decide to come here.

The question was raised about the company working with other localities and competing against each other. Mr. Denny stated that the company is working in other states, but if the GWP were to sign the contract with them, they would not work with anyone else in Virginia.

Ms. Jordan spoke up and said that because of the proximity to North Carolina, perhaps it would be more appropriate to define a radius exclusion.

Mr. Shippey stated that it needs to be clear that at the end of the day, this money is going to build relationships and there is no guarantee of landing one of these Middelstand companies.

Ms. Jordan stated that is correct; however, most of the prospects being filtered down to the region from the State are coming from these Middelstand type businesses and this region in Europe.

Mr. Porter spoke up and stated that this is similar to applying for a job; you have to get your name out there and build those relationships.

Mr. Warner asked Mr. Porter if the EDA could petition the County for funding support.

Mr. Porter stated yes.

Ms. Jordan stated that is staff's recommendation.

Mr. Warner made a motion to commit \$9,500 via a request through the County with a two year option to extend and with an appropriate radius exclusion or non-compete area and the motion result was Passed.

AYES: 4 NAYS: 1 ABSTAIN: 0 ABSENT: 1

Ayes: Tingle, Shippey, Carson, Warner

Nays: Bledsoe

Absent: Odle

## **G. OLD BUSINESS**

### **1. Bond Documents - Update**

Mr. Hlavin addressed the Authority stating that most of the discussion will focus on what the Authority would like the fee structure to look like. Bond counsel has already made most of the housekeeping changes that were discussed at the last meeting and those changes have been reviewed by the Financial and Management Services Department. He stated that Bond

Counsel has submitted a comparison document outlining the fees assessed by other localities on their bond financings.

Ms. Carson stated that she did not see any other localities with a Closing fee.

Mr. Hlavin stated yes, James City County is the only one in our area that charges a Closing fee.

Mr. Tingle stated that he is fine with dropping the Closing fee in order to maintain consistency with the surrounding localities.

The Authority generally concurred with Mr. Tingle's assessment of dropping the Closing fee.

Mr. Hlavin asked if there should be a discount for re-fundings. Some localities offer a discount when an applicant comes back for a refinancing.

Ms. Carson stated that she believes it is fair to charge a fee on a re-funding/refinancing, but she thinks that the fee should be more in line with what other localities are doing.

Ms. Mellen stated that when the County has to go back and refinance its debt, the County has to pay all the fees again.

General discussion ensued about the fees assessed by the other localities.

In summary, Mr. Hlavin stated that in the Operating Procedures Document, Section III - Fees and Expenses Including New Dollars in a Refunding, Item A would remain the same, Item B would be removed, Item C will be kept the way it is written, and then under Section II - Application Process, Item B should be changed to state one signed, original application shall be submitted. On the Policy Statement, most of the changes discussed have been made. In Section G, he suggested changing the Enterprise Zone language to the new Grove Opportunity Zone as it was designated.

The Authority concurred with the summary of the changes as outlined by Mr. Tingle.

Mr. Hlavin stated that he would bring back the final documents to the Authority for final approval at the next EDA meeting.

## 2. JRCC Update

Ms. Jordan stated that on behalf of the EDA, staff has been working with Stantec on the reconfirmation of the shell building site. The wetland reconfirmation is complete for the portion of the parcel that is north of Columbia Drive, and permits from both the Army Corps and DEQ have been finalized. Next steps include having Stantec prepare the Storm Water

Pollution Prevention Plan (SWPPP), paying for credits to offset the impacts to the wetlands, updating the site plan and architectural drawings to market to current demand and applying for the land disturbing permit from James City County. The funding and timing of the construction must be considered, but the site can be marketed as a high Tier 4 and pending Tier 5 site.

The southern portion of the parcel, as well as the two parcels recently acquired by the County and EDA, will first need a drainage plan to correct deficiencies from previous construction and improper clearing techniques as well as blocked or inadequate ditches. Vanasse Hangen Brustlin, Inc. (VHB) has evaluated the preliminary constraints of the site, and have provided a proposal for the Drainage Improvements Plan. Staff request this proposal be approved so work may commence on these sites. However, while this work is ongoing, it is recommended the EDA continue to focus attention and resources on the shell Building site (Parcel A) as that is the closest site ready for development.

Columbia Drive maintenance was approved as part of the FY 2019 budget in the Capital Improvement Plan (CIP). That work will commence this summer and is expected to take three to four weeks to complete. General Services is managing that project for the EDA. Once completed, the application can be filed to have the State adopt the road into the state highway system; and then the Authority can proceed with the subdivision application to subdivide the top portion of the property off from the lower portion.

General discussion ensued regarding the Drainage Improvement Plan submitted by VHB.

Ms. Jordan stated that a Real Estate Committee meeting had been set. The thought is that the committee will meet on a monthly basis, will continue to review and update the Priorities Spreadsheet and then will present them as part of the monthly EDA meeting. Thus, allowing the committee to be the one to vet these steps as the priorities move forward and then come to the EDA and report out.

A motion to Approve the VHB Drainage Improvement Plan Proposal was made by Robin Bledsoe and the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: Bledsoe, Tingle, Shippey, Carson, Warner

Absent: Odle

## **H. LIAISON REPORTS**

### **1. BOS Liaison**

Ms. Sadler stated that the Board is still deliberating over the appointments to the Authority. Any members with terms that expire soon will continue to serve until



new appointments are made. Ms. Sadler stated that a formal request could be made to change the Joint Meeting with the Board of Supervisors until the September work session.

2. Greater Williamsburg Chamber & Tourism Alliance

No update

3. Planning Commission

Ms. Bledsoe stated that she met with Chairman Richardson and Planning Director Paul Holt to keep the dialogue open between the two Commissions. She briefly highlighted the existing expedited review process and asked if there was any issue with sharing the JRCC Priorities Spreadsheet with the Planning Commission.

General consensus was that it would be fine to share the Priorities Spreadsheet, as long as it was understood that it is a fluid document and subject to change as necessary.

4. Greater Williamsburg Partnership (GWP)

Mr. Tingle stated that the Executive Director search closes tomorrow. The Search Committee will begin sifting through the applicants and beginning the first round of interviews. The search will continue to remain private, at least through the second round of interviews.

Mr. Tingle also stated that the GWP Board took action to expand the Board by formally inviting the College of William & Mary and Thomas Nelson Community College to make appointments to the Board, and to increase the Board by three private sector members.

5. JRCC Architectural Review Board

No update

6. Real Estate Holdings Committee

Meeting scheduled for next week.

7. Finance

No update

**I. DIRECTOR'S REPORT**

1. June Director's Report

Ms. Jordan addressed the Authority giving an overview of the report included in the Agenda Packet.

**J. ADJOURNMENT**

1. Adjourn until 8 a.m., on July 12, 2018 for the Regular Meeting

A motion to Adjourn was made by Marshall Warner, the motion result was Passed. AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: Bledsoe, Carson, Shippey, Tingle, Warner

Absent: Odle

At 10:01 a.m., Mr. Warner adjourned the Authority.

**ITEM SUMMARY**

DATE: 7/12/2018

TO: The Economic Development Authority

FROM: Stephanie Lahr, EDA Fiscal Agent

SUBJECT: June 2018 Financial Reports

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**ATTACHMENTS:**

	Description	Type
☐	Treasurer's Report	Exhibit
☐	Expenditure Report	Exhibit

**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Jordan, Amy	Approved	7/9/2018 - 12:34 PM
Publication Management	Burcham, Nan	Approved	7/9/2018 - 12:39 PM
Economic Development Authority Clerk	Fellows, Teresa	Approved	7/9/2018 - 1:25 PM

**FY 18**  
**Jennifer D. Tomes, Treasurer**  
**Report of Collections**  
**Economic Development Authority**  
**June 2018**

	<b>Budget FY 2018</b>	<b>Actual as of 6/30/2018</b>	<b>Actual as of 6/30/2017</b>	<b>% Difference from Prev Year</b>
Expense Reimbursement	\$0.00	\$17,087.76	\$5,817.56	193.73%
Interest Revenue	\$5,000.00	\$4,359.51	\$7,053.87	-38.20%
Lease Income	\$14,725.00	\$14,725.00	\$17,725.00	-16.93%
Miscellaneous Revenue	\$0.00	\$171,103.41	\$178,208.17	-3.99%
Bond Fee Revenue	\$20,000.00	\$14,684.38	\$18,536.41	-20.78%
Marina Property	\$50,000.00	\$50,000.00	\$0.00	0.00%
JCC Contribution	\$0.00	\$128,855.44	\$434,406.74	0.00%
Launchpad Client Revenue	\$0.00	\$0.00	\$14,026.53	-100.00%
Launchpad Member Contributions	\$0.00	\$0.00	\$69,000.00	-100.00%
Landlord Contributions	\$0.00	<u>\$0.00</u>	<u>\$0.00</u>	0.00%
<b>TOTALS</b>	<b><u>\$89,725.00</u></b>	<b><u>\$400,815.50</u></b>	<b><u>\$744,774.28</u></b>	<b><u>-46.18%</u></b>

	<b>Actual as of 6/30/2018</b>	<b>Actual as of 6/30/2017</b>	<b>% Difference from Prev Year</b>
Checking Acct Balance	\$164,595.99	\$51,721.67	218.23%
Investment Balance	<u>\$234,353.92</u>	<u>\$507,445.55</u>	-53.82%
<b>TOTAL BANK BALANCE</b>	<b><u>\$398,949.91</u></b>	<b><u>\$559,167.22</u></b>	<b><u>-28.65%</u></b>
<b>LEDGER BALANCE*</b>	<b><u>\$350,083.01</u></b>	<b><u>\$558,481.22</u></b>	<b><u>-37.32%</u></b>

\*Ledger balance may vary from bank balance because of outstanding checks, deposits not posted to the bank account before month-end, and other adjustments.

**JAMES CITY COUNTY**  
**EXPENDITURES- ALL FUNDS**

**James City County**

06-Jul-18

jccExp: Year ( 2018 ) Period ( 12 )

Ledger ID	Ledger Description	TOTAL BUDGET	MTD EXPENSES	ENCUMBRANCES	YTD EXPENSES	BALANCE	ACTUAL %
<b>(021) EDA</b>							
<b>(259) EDA Operating</b>							
021-259-0200	ADVERTISING	\$500.00	\$0.00	\$0.00	\$299.25	\$200.75	59.85%
021-259-0203	PROFESSIONAL SERVICES	\$0.00	\$98.15	\$0.00	\$843.51	(\$843.51)	0.00%
021-259-0205	PROMOTION	\$60,701.00	\$1,961.20	\$0.00	\$55,286.09	\$5,414.91	91.08%
021-259-0220	TRAVEL AND TRAINING	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	0.00%
021-259-0222	LOCAL TRAVEL	\$500.00	\$0.00	\$0.00	\$298.89	\$201.11	59.78%
021-259-0235	ANNUAL AUDIT	\$10,039.00	\$0.00	\$0.00	\$10,039.00	\$0.00	100.00%
021-259-0319	OFFICE SUPPLIES	\$400.00	\$0.00	\$0.00	\$253.45	\$146.55	63.36%
021-259-0710	LEGAL SERVICES	\$6,000.00	\$500.00	\$0.00	\$6,000.00	\$0.00	100.00%
021-259-5900	REGIONAL ECON DEVEL SUPPORT	\$116,659.00	\$0.00	\$0.00	\$111,659.00	\$5,000.00	95.71%
021-259-5902	VHSR	\$2,500.00	\$0.00	\$0.00	\$2,500.00	\$0.00	100.00%
021-259-5903	JAMES RIVER COMMERCE CTR-OPS	\$66,804.00	\$0.00	\$6,259.44	\$50,676.43	\$9,868.13	85.23%
021-259-5904	MAINLAND FARM OPER EXPENSES	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	0.00%
021-259-5905	ENTERPRISE ZONE GRANTS	\$0.00	\$48,866.90	\$0.00	\$65,109.38	(\$65,109.38)	0.00%
021-259-5909	OED DISCRETIONARY EXPENDITURE	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	0.00%
021-259-5913	SMALL BUSINESS ASSISTANCE	\$5,000.00	\$0.00	\$0.00	\$7,465.00	(\$2,465.00)	149.30%
021-259-5915	MARINA PROPERTY	\$747,707.00	\$0.00	\$2,457.42	\$716,522.73	\$28,726.85	96.16%
021-259-5918	CONTINGENCY	\$315,481.00	\$0.00	\$0.00	\$0.00	\$315,481.00	0.00%
021-259-5919	STRATEGIC INITIATIVE	\$2,100.00	\$0.00	\$0.00	\$2,400.00	(\$300.00)	114.29%
<b>Subtotal (259) EDA Operating:</b>		<b>\$1,334,691.00</b>	<b>\$51,426.25</b>	<b>\$8,716.86</b>	<b>\$1,029,352.73</b>	<b>\$296,621.41</b>	<b>77.78%</b>

**ITEM SUMMARY**

DATE: 7/12/2018

TO: The Economic Development Authority

FROM: Maxwell Hlaving, EDA Legal Counsel

SUBJECT: Billsburg Brewery Lease Update

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Construction on the shell warehouse building at the marina was substantially complete one year ago, in June 2017. Staff, along with the County Attorney's office, has reviewed the lease language and identified minor amendments recommended for clarity and ease of implementation. In addition to minor language modifications, the two leases between the EDA and Billsburg Brewery for the taproom and the warehouse, previously separate leases, are being combined into a single lease.

**ATTACHMENTS:**

	Description	Type
☐	Resolution	Resolution
☐	EDA-B2 Lease Amendment (Combined)	Cover Memo
☐	EDA-B2 Lease Amendment (Clean)	Exhibit
☐	Amended Lease Exhibit A	Exhibit
☐	Brewery As-Built Drawings (Exhibit A)	Exhibit
☐	Taproom Improvements As-Built Drawings (Exhibit B)	Exhibit
☐	JCC Marina Utility As-Built (Exhibit C)	Exhibit
☐	Stormwater As-Built (Exhibit D)	Exhibit
☐	Billsburg Brewery Photos (Exhibit E)	Exhibit
☐	FMS Amendments - Strikethrough	Exhibit
☐	FMS Amendments - Clean	Exhibit

**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Jordan, Amy	Approved	7/9/2018 - 12:34 PM
Publication Management	Burcham, Nan	Approved	7/9/2018 - 12:38 PM
Economic Development Authority Clerk	Fellows, Teresa	Approved	7/9/2018 - 1:12 PM

LEASE AMENDMENT AND IMPROVEMENT APPROVAL FOR BILLSBURG BREWERY AT  
THE JAMES CITY COUNTY MARINA

WHEREAS, the James City County Economic Development Authority (the "EDA") has leased a portion of the James City County Marina, located at 2054 Jamestown Road (the "Marina") from James City County, Virginia (the "County"); and

WHEREAS, on August 2, 2016, the EDA leased the second story of an existing building located at the Marina ("Lease 1") to Billsburg Brewery, Inc. ("Billsburg"); and

WHEREAS, on December 9, 2016, the EDA leased a portion of the Marina to Billsburg, upon which the warehouse facility was constructed ("Lease 2"); and

WHEREAS, construction of the warehouse facility is complete and Billsburg is operational; and

WHEREAS, amendments to Lease 1 and Lease 2 are necessary in order to clarify terms and combine Lease 1 and Lease 2 into one comprehensive lease.

NOW, THEREFORE, BE IT RESOLVED that the Economic Development Authority of James City County, Virginia, hereby authorizes its Chairman to execute the amended deed of lease as presented, which shall amend, supersede, and replace Lease 1 and Lease 2.

BE IT FURTHER RESOLVED that the Economic Development Authority of James City County, Virginia, in accordance with the terms of the lease, hereby approves the following improvements made by Billsburg to the leased premises:

1. All improvements shown on the as-built plans entitled, "BILLSBURG BREWERY TENANT IMPROVEMENTS TO JCC MARINA WAREHOUSE BUILDING," prepared by GuernseyTingle, dated March 7, 2017, and attached hereto as Exhibit A.
2. All improvements shown on the as-built plans entitled, "BILLSBURG BREWERY TAPROOM at JAMES CITY COUNTY MARINA," prepared by GuernseyTingle, dated March 8, 2017, and attached hereto as Exhibit B.
3. All improvements shown on the as-built plans entitled, "SANITARY & WATER AS-BUILT DRAWINGS, JAMES CITY COUNTY MARINA WAREHOUSE, PREPARED FOR DAVID A. NICE BUILDERS, INC.," prepared by Seibert Surveying & Layout, LLC, dated December 4, 2017, and attached hereto as Exhibit C.
4. All improvements shown on the as-built plans entitled, "STORMWATER AS-BUILT DRAWINGS, JAMES CITY COUNTY MARINA WAREHOUSE, PREPARED FOR DAVID A. NICE BUILDERS, INC.," prepared by Seibert Surveying & Layout, LLC, dated July 5, 2017, and attached hereto as Exhibit D.

The approved improvements existing as of the date of this Resolution are generally reflected in the photographs attached hereto as Exhibit E.

BE IT FURTHER RESOLVED that the Economic Development Authority of James City County, Virginia, in accordance with the terms of its lease with the County, hereby directs its Secretary to present all necessary improvements to the County Administrator for acceptance by the County.

The undersigned hereby certifies that the above Resolution was duly adopted by the Directors of the Economic Development Authority of James City County, Virginia, at a meeting duly called and held on July 12, 2018, and that such Resolution is in full force and effect on the date hereof.

\_\_\_\_\_  
Chairman, Economic Development Authority  
James City County, Virginia

ATTEST:

\_\_\_\_\_  
Amy Jordan  
Secretary to the EDA

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
TINGLE	_____	_____	_____
CARSON	_____	_____	_____
ODLE	_____	_____	_____
BLEDSON	_____	_____	_____
SHIPPEY	_____	_____	_____
WARNER	_____	_____	_____

Adopted by the Economic Development Authority of James City County, Virginia, this 12th day of July, 2018.

JCCMarinaLeaseAmend-res



JAMES CITY COUNTY ECONOMIC DEVELOPMENT AUTHORITY

MARINA DEED OF LEASE

THIS AMENDED DEED OF LEASE, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016~~8~~, by and between the Economic Development Authority of James City County, Virginia a political subdivision of the Commonwealth of Virginia (the "EDA"), and Billsburg Brewery, Inc., a Virginia stock corporation ("Billsburg" or the "Tenant") (each a "Party" and together, the "Parties").

WITNESSETH:

WHEREAS, the EDA has leased a portion of 2054 Jamestown Road, Williamsburg, Virginia 23185, further identified as James City County Tax Map Parcel Number 4640100012 (in its entirety referred to as the "Marina") from the County of James City, Virginia (the "County"); and

WHEREAS, the EDA advertised a Request for Proposal, published December 12 and 16, 2015 (the "RFP") to establish a commercial use at the Marina. The Tenant submitted a proposal dated January 8, 2016 (the "Proposal"). The RFP and Proposal are incorporated herein by reference.

WHEREAS, the EDA determined that the Proposal was responsive to the RFP and further determined that the Proposal was acceptable; and

WHEREAS, on August 2, 2016, the EDA leased the second story of an existing building located at the Marina to the Tenant ("Lease 1"), which ~~prior~~ lease contemplated the construction of a warehouse facility at the Marina to be occupied by the Tenant; and

WHEREAS, on \_\_\_\_\_, December 9, 2016, the EDA ~~held a meeting and, by a \_\_\_\_\_ to \_\_\_\_\_ vote, adopted a resolution authorizing the Chairman or Vice Chairman to execute this Lease Agreement with~~ leased a portion of the Marina to the Tenant, upon which a brewery building was constructed ("Lease 2"); and:

WHEREAS, construction of the brewery building is complete and Billsburg is operational;  
and

WHEREAS, amendments to Lease 1 and Lease 2 are necessary in order to clarify terms and combine Lease 1 and Lease 2 into one comprehensive lease.

NOW, THEREFORE, in consideration of the below stated rent and other terms and conditions agreed to in this Amended Deed of Lease, which shall amend, supersede, and replace Lease 1 and Lease 2, hereinafter referred to as the "Lease," the EDA does hereby lease to Tenant, and Tenant does hereby rent from the EDA, the following interests in the described lots, pieces, or parcels of land, together with all improvements thereon to-wit:

An exclusive leasehold interest in a portion of the Marina, being the area shown in red on the site plan titled, "JCC MARINA WAREHOUSE PREPARED FOR JAMES CITY COUNTY ECONOMIC DEVELOPMENT, JAMES CITY COUNTY,

VIRGINIA,” which is attached to and made a part of this Lease as Exhibit A; ~~and,~~

AND

A non-exclusive leasehold interest in the area shown in blue on Exhibit A (the “Common Area”) (all together with the exclusive interest referred to as, the “Premises”);

AND

A non-exclusive leasehold interest in a shared area that provides access and parking as shown in green on Exhibit A (the “Shared Area”)

AND

All rights appurtenant to the Premises including, without limitation, stormwater drainage rights, and ingress and egress easements which are insurable under a leasehold title insurance policy.

TO HAVE AND TO HOLD said land and improvements thereon and the privileges and appurtenances thereunto belonging unto the Tenant, its permitted successors and assigns, for the term hereinafter provided, and upon all of the following terms and conditions, to which the parties mutually covenant and agree:

## **1. WAREHOUSE ~~CONSTRUCTION~~ AND TAPROOM**

This Lease is executed by the Parties with the understanding that the EDA ~~intends to construct~~ a warehouse facility ~~of up to four thousand (4,000) square feet~~ on the Premises ~~consistent with County IFB # 17-11265 (with any reasonable alterations), as generally shown as, “PREFABRICATED BUILDING” on Exhibit A, and consistent with County IFB # 17-11265 (with any reasonable alterations) (the “Building”).~~ The Building shall be suitable for alteration by the Tenant at the Tenant’s cost to satisfy its needs as set forth in the Proposal. Also included as part of this Lease is the second floor of the building generally shown as, “2 STORY BLOCK BUILDING 2ND FLOOR” on Exhibit A (the “Taproom”) (the Building and the Taproom together referred to in this Lease as, the “Brewery Buildings”). ~~If, for any reason, site work for the Building has not begun by March 1, 2017, either Party may terminate this Lease by written notice to the other Party.~~

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## **2. TERM**

a. This Lease shall commence upon the signature of all parties ~~(the “Commencement Date”). The EDA shall give the Tenant possession of the Building upon the issuance of a Certificate of Completion for the Building (the “Possession Date).~~ Rent payments as defined in Section 3 ~~shall commence~~ upon the earlier occurrence of (1) September 1, 2017; or (2) ~~issuance of the final Certificate of Occupancy for the Building (the first occurrence referred to as the “Rent Commencement Date”).~~ ~~The executory period between the Commencement Date and the Rent Commencement Date shall be referred to as the “Pre-Rent Term.”~~ If the EDA, for any reason whatsoever, cannot deliver possession of the Building to the Tenant on the Possession Date, then this Lease shall not be affected or impaired in any way except as herein expressly provided and ~~the EDA shall not be liable to the Tenant for any loss or damage resulting therefrom or caused~~

~~thereby. In the event the EDA cannot deliver the Building within 120 days of the Possession Date, the Tenant has the right in its sole discretion to terminate this Lease with no further liability. Unless expressly provided otherwise herein, rent shall commence on the Rent Commencement Date.~~

b. The initial term of this Lease shall be for ten (10) years and shall end on the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date. Provided the Tenant is not in default, this Lease shall automatically renew for up to two (2) additional terms of five (5) years each (each a "Renewal Term"). The Tenant may give notice of intent to terminate this Lease upon written notice to the EDA at least one hundred and eighty (180) days prior to the expiration of the Initial Term or any Renewal Term. The Initial Term in conjunction with any Renewal Term of this Lease is referred to as the "Term." The expiration of this Lease at the end of the Term shall be referred to as the "Expiration Date." Subsequent renewals are permitted upon mutual written agreement between the parties.

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### 3. RENT

During the first year of the Initial Term of this Lease, Tenant covenants to pay a base annual rental to the EDA equal to Sixty Thousand Dollars (\$60,000), which shall be payable in equal monthly installments in advance on the first day of each month in the amount of Five Thousand Dollars (\$5,000) ("Rent"). Rent shall increase by three percent (3%) for each of the first five (5) subsequent years of the Initial Term. Rent for each of the remaining four years of the Initial Term shall be equal to a base annual rent of Seventy Thousand Dollars (\$70,000), which shall be payable in equal monthly installments in advance on the first day of each month in the amount of Five Thousand Eight Hundred Thirty-three and 33/100 Dollars (\$5,833.33). Rent shall increase five percent (5%) for each Renewal Term. Rent shall be paid according to the following schedule:

YEAR	ANNUAL	MONTHLY
1	\$60,000.00	\$5,000.00
2	\$61,800.00	\$5,150.00
3	\$63,654.00	\$5,304.50
4	\$65,563.62	\$5,463.64
5	\$67,530.53	\$5,627.54
6	\$69,556.44	\$5,796.37
7	\$70,000.00	\$5,833.33
8	\$70,000.00	\$5,833.33
9	\$70,000.00	\$5,833.33
10	\$70,000.00	\$5,833.33
11	\$73,500.00	\$6,125.00
12	\$73,500.00	\$6,125.00
13	\$73,500.00	\$6,125.00
14	\$73,500.00	\$6,125.00
15	\$73,500.00	\$6,125.00
16	\$77,175.00	\$6,431.25
17	\$77,175.00	\$6,431.25
18	\$77,175.00	\$6,431.25
19	\$77,175.00	\$6,431.25
20	\$77,175.00	\$6,431.25

The rent for any terms subsequent to the Final Expiration Date of this Lease shall be as mutually agreed upon by the parties.

The Tenant shall pay Rent to the EDA, on or before the first day of each calendar month during the Term, without previous demand or notice therefore by the EDA and without set-off or deduction. In the event that Rent initially becomes due on a day other than the first of the calendar month, that payment shall be prorated and the subsequent Rent payment shall be due on the first of the following month. Notwithstanding anything contained herein to the contrary, the Tenant's obligation to pay Rent under this Lease is completely separate and independent from any of the EDA's obligations under this Lease. For each monthly Rent payment the EDA receives after the tenth (10th) day of the month, the EDA shall be entitled to, in addition to all other remedies provided in this Lease, a late charge in the amount of five percent (5%) of all Rent due for such month. Rent shall be paid to the following:

James City County Economic Development Authority  
Account # 021-309-5915  
P.O. Box 8784  
Williamsburg, VA 23187-8784

#### 4. TAXES AND ASSESSMENTS

The Tenant shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during the term hereof. The Tenant shall be responsible for the real estate taxes assessed on the Premises. In the event any or all of the taxes for which Tenant is responsible shall be assessed and taxed to the EDA, the Tenant shall pay to the EDA its share of such taxes within ten (10) days after delivery to the Tenant by the EDA of a statement in writing setting forth the amount of such taxes applicable to the Tenant.

#### 5. USE OF PREMISES

a. The Tenant shall be permitted to use the Premises for the uses described in the Proposal (the "Brewery"), which includes any uses permissible under ABC laws for a brewery, and those that may be approved by a majority vote of the EDA, subject to the following provisions:

- i. The Tenant must obtain the EDA's permission prior to any proposed change in the size or scope of the Brewery or prior to establishing any new use at the Premises.
- ii. The Tenant shall never make any use of the Premises which is in violation of any federal, state, or local laws, rules, or regulations, whether now existing or hereafter enacted.
- iii. The Tenant may not make any use that is or may be a nuisance or trespass or makes such insurance unavailable to the EDA on the Premises.
- iv. The Tenant shall not make exclusive use of the Common Area or Shared Area without prior written agreement of the EDA.

b. The EDA shall have the option to reserve and use the Premises without cost up to three (3) times per year subject to the following conditions:

- i. No such use shall take place on a day that the Brewery is not in operation without prior written agreement by the Tenant.
- ii. Use of the Premises shall be requested by the EDA at least sixty (60) days prior to the date of use.
- iii. All good and services provided by the Tenant shall be agreed on and compensated independent of this Lease.

c. The EDA shall have use of the Common Area as the EDA sees fit. Nothing in this Lease shall restrict the EDA's use of the Common Area. |

#### 6. CONDITION OF THE PREMISES

a. The Tenant's occupancy and use of the Premises shall be the Tenant's representation to the EDA that the Tenant has examined and inspected the same, finds the Premises to be satisfactory for the Tenant's intended use, and constitutes the Tenant's acceptance of the Premises "AS IS." The Tenant shall deliver at the end of this Lease each and every part of the Premises in good repair and condition, ordinary wear and tear and damage by insured casualty excepted. The delivery of a key or other such tender of possession of the Premises to the EDA or to an employee of the EDA prior to the expiration of the Term shall not operate as a termination of this Lease or a surrender of the Premises except upon written notice by the EDA in accordance with the terms

hereof. The Tenant shall: (i) keep the Premises in good order; (ii) make repairs and replacements to the Premises as needed because of the Tenant's or its employees' or invitees' use, misuse, or primary negligence; and (iii) not commit waste.

b. Upon termination of this Lease or vacation of the Premises by the Tenant, the Tenant shall restore the Premises to the same condition as existed at the Rent Commencement Date at Tenant's sole expense; ordinary wear and tear, alterations and improvements approved pursuant to Section 10 of this Lease, and damage by insured casualty only excepted. The EDA, however, may elect to require the Tenant to leave non-approved alterations or improvements performed by or for the Tenant unless, at the time of such alterations, the EDA agreed in writing that such alterations could be removed upon the expiration or termination of this Lease, or upon Tenant's vacation of the Premises.

## 7. SIGNS

The Tenant may not erect, install, or display any sign or other advertising material on or about the Premises without the prior written consent of the EDA, or in conflict with any state or local laws. The Tenant shall be solely responsible for the cost to install and maintain any signs erected on the Premises.

## 8. ASSIGNMENT, SUBLETTING AND MORTGAGING

The Tenant shall not assign this Lease or sublet or place any mortgage upon the Premises, in whole or in part, without the EDA's prior written consent. If consent to assign or sublease is obtained, no such assignment or sublease shall in any way release or relieve the Tenant from any of its covenants or undertakings contained in this Lease, and in all cases under this paragraph, the Tenant shall remain liable on this Lease during the Term. The Tenant's request for consent to any subletting or assignment of this Lease shall be accompanied by a written statement setting forth the details of the proposed sublease or assignment and any other information the EDA deems relevant. The EDA shall have the right to (a) withhold consent; (b) grant consent; or (c) terminate this Lease as of the effective date of such sublease or assignment. After ten (10) days written notice to the Tenant of the EDA's intention to terminate, the Tenant may withdraw its request for consent and this Lease shall continue with its terms. In the event the Tenant does not withdraw its request for consent to sublet or assign, the EDA may elect to enter into a direct lease with the proposed assignee or subtenant. The Tenant shall be liable for reasonable expenses incurred by the EDA in connection with an assignment, subletting, or mortgage of the Premises.

## 9. UTILITIES

a. ~~Until such time as Section 9(c) takes effect, electric, During the Term of this Lease, water, and sewer services shall be in the name of the EDA or the County, and the Tenant shall reimburse the EDA for all charges within ten (10) days of the EDA giving notice that the same have become due. All other utility services shall be contracted for directly by the Tenant. The EDA shall not be liable for any interruption or failure in the supply of any utility to the Premises and no abatement of Rent shall be allowed to the Tenant as a result thereof, unless such interruption is prolonged and is a result of the EDA's negligence, nor shall the Lease or any of the EDA's obligations be in any way affected thereby. The Tenant shall be responsible for the extension or expansion of all utilities necessary to serve any improvements made to the Premises pursuant to Section 10 of this Lease.~~

b. All utility charges incurred by the EDA or the County and attributable to the Brewery prior to this Amendment shall be paid by the Tenant on or before November 1, 2018 and shall be

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charged to the Tenant as Additional Rent. Additional Rent for past utilities shall be One Thousand Six Hundred Seventy and 71/100 dollars (\$1,760.71) per month.

c. Upon the occurrence of (i) Major Improvement to the Taproom by the Tenant; (ii) Major Improvement of the 2 Story Block Building by the EDA or the County; or (iii) relocation of the Tenant pursuant to Section 20, the Tenant shall, at its expense, separately meter all utilities serving the Building and the Taproom (as currently located or relocated) and separately contract for such services.

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## 10. IMPROVEMENTS, REPAIRS, ALTERATIONS, AND MAINTENANCE

a. All maintenance, upkeep, and repair ("Maintenance") of the Premises shall be performed or contracted for by the Tenant at its sole expense, excepting structural repairs of the Building covered by any warranty held by the EDA. The Tenant shall not be reimbursed for any Maintenance unless otherwise agreed to in writing by the EDA. The EDA shall immediately notify the Tenant in writing of any observed site deficiencies. The Tenant shall have thirty (30) calendar days from the day of receipt of written notification to correct the deficiency. E-mail shall constitute "written notification." If the deficiency is not corrected within this time period, the EDA may procure the required goods or services from other sources and hold the Tenant responsible for any resulting additional purchase, staff, and administrative costs limited to 10% of the repairs made by the EDA. This remedy shall be in addition to other remedies which the EDA may have.

b. The EDA shall participate in any repair to the extent that such repair is covered by a warranty held on the Building. The EDA covenants and agrees that it shall comply with the maintenance obligations of its lease with the County. Subject to the terms set forth in the lease between the County and the EDA, the County shall be responsible for the repair or replacement of all aspects of the Taproom, excepting only the electric heat pump/air conditioning unit, which the Tenant accepts "AS IS." Neither the EDA nor the County shall repair or replace the existing electric heat pump/air conditioning unit in the Taproom. Neither the EDA nor the County shall be liable (and shall assess the costs thereof to the Tenant) when any repair or replacement of the Premises is made necessary by the negligent or willful acts or omission of the Tenant, its agents, invitees, or employees. The EDA shall not be liable for or have any obligation to repair or replace any improvements made to the Premises by the Tenant.

c. The Tenant may make improvements to the Brewery Buildings using its own resources. The Tenant may make non-structural alterations, additions, or improvements to the Brewery Buildings not exceeding Five Thousand Dollars (\$5,000) in cost ("Minor Improvement") without the prior written consent of the EDA. Any external Minor Improvement shall be a neutral or muted earth tone color that complements the Marina. Other than routine maintenance, the Tenant shall not make any alterations of, additions to, or changes to the Brewery Buildings which that (1) exceed five thousand dollars (\$5,000) in cost, or (2) are structural ("Major Improvement") without the prior written consent of the EDA, such consent not to be unreasonably withheld. Minor Improvements that, at the EDA's sole discretion, aggregate to a Major Improvement, shall be treated as a Major Improvement under this Lease. All such Minor Improvements and Major Improvements (collectively, "Improvements") shall meet local, state, and federal requirements. The Tenant shall perform all work required to improve the Brewery Buildings to a finished condition ready for the conduct of the Tenant's business. The Tenant shall provide construction drawings to the EDA for each proposed Improvement and shall provide the EDA with a cost estimate for each. The EDA shall consider each such proposed Major Improvement and may, at its sole discretion, approve, conditionally approve, or deny each such proposed Major Improvement or any portion thereof. Upon completion of any Improvement, the Tenant shall

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provide the EDA with a set of as-built construction plans. Equipment and machinery shall not be deemed Improvements under this Lease.

c.

d. The Tenant may, with the prior written consent of the EDA, make improvements to the landscaping on the Premises, such as, but not limited to, the installation of sod, mulch, plants, trees, benches, water features, etc. ("Landscape Improvements"). Any request for Landscape Improvements shall be submitted to the EDA in writing along with plans illustrating the location and type of plantings and improvements proposed. Such plans shall be submitted by the EDA to the County for review and approval by the appropriate County departments. The EDA shall, in writing, approve, conditionally approve, or deny the Landscape Improvements within forty-five (45) days of receipt of the request and illustrative plans.

e. The Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of the Tenant. Should any claim of lien or other lien be filed against the Premises by reason of any act or omission of the Tenant or any of the Tenant's agents, employees, contractors, or representatives, then the Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within forty-five (45) days after the filing thereof. The EDA shall give the Tenant notice of any lien filed against the Premises for which the EDA has actual notice. Should the Tenant fail to discharge such lien within such forty-five (45) day period, then the EDA may discharge the same, in which event the Tenant shall reimburse the EDA, on demand, the amount of the lien or the amount of the bond, if greater, plus all reasonable administrative costs incurred by the EDA in connection therewith. The remedies provided herein shall be in addition to the other remedies available to the EDA under this Lease or otherwise. The Tenant shall have no power to do any act or make any contract that may create or be the foundation of any lien, mortgage, or other encumbrance upon the reversionary or other estate of the EDA, or any interest of the EDA in the Premises. NO CONSTRUCTION LIENS OR OTHER LIENS FOR ANY LABOR, SERVICES, OR MATERIALS FURNISHED TO THE PREMISES SHALL ATTACH TO OR AFFECT THE INTEREST OF EDA IN AND TO THE PREMISES.

f. Upon expiration or earlier termination of this Lease, the Tenant's leasehold interest in the Premises shall terminate and title to the Improvements shall automatically pass to, vest, belong to, and become the property of the EDA. The Tenant shall, if the EDA shall deem it appropriate, execute any further documents to confirm this transfer of title to the EDA with cost of charge to the EDA. The Tenant shall be responsible for the removal of its personal property, upon expiration or earlier termination of this Lease, provided that the Tenant shall be responsible for the cost of repair of any damage caused by the removal. The EDA and Tenant shall negotiate in good faith with regard to the removal of equipment and machinery and/or the sale of same to the EDA.

g. The Tenant shall, on the last day of the term, or upon the sooner termination of this Lease, peaceably and quietly surrender the Premises and equipment to the EDA, broom-clean, including all Improvements, alterations, rebuildings, replacements, changes, or additions placed by the Tenant thereon, in as good condition and repair as the same were in at the commencement of the original term, normal wear and tear and damage by insured casualty excepted.

## 11. EMINENT DOMAIN

If all of the Premises, or such part thereof as will make the same unusable for the purposes contemplated by this Lease, be taken under the power of eminent domain (or a conveyance in lieu thereof), then this Lease shall terminate as of the date possession is taken by the condemnor, and Rent shall be adjusted between the EDA and the Tenant as of such date. If only a portion of the

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Premises is taken and the Tenant can continue use of the remainder, then this Lease will not terminate, but Rent shall abate in a just and proportionate amount to the loss of use occasioned by the taking.

The EDA shall be entitled to the entire proceeds of any condemnation award; provided, however, that Tenant may pursue a separate claim for the book value less depreciation of Improvements placed on the Premises by Tenant at its own expense, as shown on Tenant's most recent federal income tax return or as certified as a book value amount by Tenant, adjusted for subsequent additions and depreciation to the date of such condemnation, plus amounts, to compensate Tenant for expenses special to Tenant provided the foregoing does not reduce the EDA's award.

## 12. ACCESS TO PREMISES

a. The EDA shall have the right, upon twenty four (24) hours prior notice to the Tenant (except in the case of an emergency, in which event the EDA shall have the right to enter the Premises as the EDA reasonably deems necessary), either itself or through its authorized agents, to enter the Premises (i) for the purposes of inspection, (ii) to make repairs, alterations or changes as EDA deems necessary after the Tenant has neglected its obligations under this Lease, and (iii) to show the Premises to prospective lessees, mortgagees, and/or purchasers. The EDA shall have the right, either itself or through its authorized agents, to place signs in conspicuous places about the Premises and to otherwise advertise the Premises for sale or rent, and to enter the Premises at all reasonable times for inspection to show prospective lessees, mortgagees, and/or purchasers if within one hundred eighty (180) days prior to the Expiration Date as extended by any exercised option for a Renewal Term.

b. The Tenant, its agents, employees, invitees, and guests, shall have the right of ingress and egress to the Common Area, Shared Area, and public areas of the Marina, provided the EDA and the County may regulate and control such access, or as needed for making repairs and alterations.

c. The EDA shall furnish the Tenant with a key to the Building and the Taproom. All keys to the Building and Taproom shall remain the property of the EDA. No additional locks shall be allowed on any door of the Building or the Taproom without the EDA's written permission, which shall not be unreasonably withheld. Notwithstanding the foregoing, the Tenant may install locks on the doors of individual offices within the Building or the Taproom, provided that the Tenant shall provide a copy of any such keys to the EDA. The Tenant shall supply the EDA with a copy of any keys necessary to access the Building and the Taproom. Upon termination of this Lease, the Tenant shall surrender to the EDA all keys to the Building and the Taproom, and give to the EDA the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, in the Building and the Taproom.

e.d. During the Brewery's normal operating hours, the Tenant shall keep the bathrooms located in the Taproom open for use by those using the County's park facilities at the Marina.

## 13. HAZARDOUS SUBSTANCE

a. The Tenant shall not knowingly cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Premises by the Tenant, the Tenant's agents, employees, or contractors without the prior express written consent of the EDA.

b. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive or corrosive and that is or becomes regulated by any local government, the

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Commonwealth of Virginia or the United States Government. "Hazardous Substance" also includes any and all materials or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local law or becomes regulated by any federal, state or local authority. "Hazardous Substance" includes, but is not restricted to, asbestos, polychlorinated biphenyl's (PCB's), solvents, printing inks, pesticides, solvents, and leads. "Hazardous Substance" excludes petroleum products when said petroleum products are stored and dispensed in accordance with all federal, state, and local laws and regulations. Notwithstanding the foregoing, ordinary items such as propane, paint, cleaning supplies, etc. shall not be deemed Hazardous Substances.

c. The Tenant shall provide the EDA, in a timely manner, a Safety Data Sheet ("SDS") upon the EDA's request. Said SDS shall describe the chemical properties of any hazardous substances which may be used, stored, generated, or disposed of on or in the Premises.

#### **14. INSURANCE**

a. At all times during the Lease, at its own cost and expense, the Tenant shall keep or cause to be kept on all Improvements, alterations, renovations, replacements, substitutions, changes, equipment, fixtures, motors, and machinery owned or leased by the Tenant and installed in or used in connection with the Premises, insurance against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered), flood and such other hazards, casualties, risks, and contingencies now covered by or that may hereafter be considered, as included within the standard form extended coverage endorsement, in an amount equal to the actual replacement cost (the "Full Insurable Value") and sufficient so that no co-insurance penalty shall be invoked in case of loss. Such Full Insurable Value shall be determined from time to time at the request of the EDA (no more often than once every year) but at the expense of the Tenant by the fire insurance company carrying the highest amount of fire insurance on the Premises or its agent, or by an appraiser selected by the Tenant that is experienced in insurance appraisals who is approved in writing by the EDA which approval shall not be unreasonably withheld. The failure of the EDA to request such appraisal shall not release the Tenant from its obligations hereunder.

b. At all times during the Lease, at its own cost and expense, the Tenant shall provide and keep in force comprehensive general liability insurance in standard form, protecting the Tenant and naming the EDA as an additional insured, on a primary basis with no participation required by the EDA's liability policy, against personal injury, including without limitation, products and completed operations, personal and advertising injury, bodily injury, death, or property damage and contractual liability on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. If the Tenant maintains broader coverage and/or higher limits than the minimums shown above, the EDA requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the EDA. The EDA reserves the right to amend these limits from time to time during the course of the Lease. All such policies shall cover the entire Premises and any improvements thereon, including parking, common areas, means of access, and roadways therein, and streets and sidewalks adjacent thereto.

c. At all times during the Lease when the Tenant is engaged in the construction or reconstruction of any Improvement, or repairs thereof, at its own cost and expense, the Tenant shall provide and keep in force for the benefit of the EDA and the Tenant, "all risk" builders risk insurance on the Premises and all Improvement(s) under construction naming the EDA as a loss payee on the policy.

d. At all times during the Lease, at its own cost and expense, the Tenant shall purchase and keep in force worker's compensation insurance and employer's liability insurance for all employees of the Tenant in strict compliance with the laws of the Commonwealth of Virginia in the following minimum amounts: Coverage A – Statutory, Coverage B - \$100,000/\$100,000/\$500,000.

e. All of the policies of insurance required by this Lease shall be i) in form and substance as reasonably approved by the EDA; ii) underwritten only by companies licensed in the Commonwealth of Virginia which have a then-current Alfred M. Best Company, Inc. (or if it no longer exists, a then comparable rating service) general policyholder's rating of A or better (or the equivalent thereof) and a financial rating of VII or better (or the equivalent thereof); iii) accompanied by evidence of payment of premiums thereon to the insurance companies or their agents, including evidence of current annual payment, if on an installment payment basis; iv) contain standard waiver of subrogation clauses; and v) provide that they may not be canceled by the insurer for non-payment of premiums or otherwise until at least thirty (30) days after a receipt of the proposed cancellation, and in any event, shall not be invalidated, as to the interests of the Tenant therein, by any act, omission or neglect of the Tenant (other than nonpayment of premiums), which might otherwise result in a forfeiture or suspension of such insurance, including without limitation, the occupation or use of the Premises for purposes more hazardous than those permitted by the terms of the policy, any foreclosure of any leasehold deed of trust and any change in title or ownership of the Premises. If requested by the EDA, copies of all insurance policies required by this Lease shall be delivered by the Tenant to the EDA. All insurance policies shall be renewed by the Tenant and proof of such renewals, including appropriate endorsement page(s), accompanied by evidence of the payments of the premiums thereon to the insurance companies or their agents, shall be delivered to the EDA, at least twenty (20) days prior to their respective expiration dates. All self-insured retentions, deductibles and aggregate limits on any required insurance must be disclosed and approved by the EDA.

f. The EDA and the Tenant mutually release and discharge each other (as well as the officers, directors, partners, agents and employees of each other) from responsibility and liability (by way of subrogation or otherwise) for loss or damage to any building, structure, equipment, or other real or personal property of the other, or any resulting loss of income or business, that may arise from a fire or other casualty or is otherwise covered by insurance. The above releases also shall apply to any third party, including any insurance company, claiming through or under a party as a result of a right of subrogation. All casualty insurance policies required to be maintained under this Lease shall contain "waiver of subrogation" clauses to carry out these release provisions.

## **15. DAMAGE TO ~~BUILDING PREMISES~~**

If, by reason of such fire or other casualty, the Premises is rendered wholly untenantable, the Rent and other charges payable by the Tenant shall be fully abated, or if only partially damaged, such rent and other charges shall be abated proportionately as to that portion of the Premises rendered untenantable, in either event (unless the Lease is terminated, as aforesaid) from the date of such casualty until (i) occupancy of the Premises by Tenant; (ii) the date the EDA has the Premises ready for occupancy by the Tenant provided the Tenant has been given at least fourteen (14) days' notice of same, or (iii) the date the EDA could have had the Premises ready had there been no delays attributable to the Tenant. The Tenant shall continue the operation of the Tenant's business in the Premises or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management. However, if such damages or other casualty shall be caused by the negligence or other wrongful conduct of the Tenant or of the Tenant's subtenants, licensees, contractors, or invitees, or their respective agents or employees, there shall be no abatement of Rent or other charges. Notwithstanding the foregoing,

the Tenant may elect to obtain loss of rents insurance coverage covering a period of no less than twelve (12) months, in which event the preceding sentence stating that there shall be no abatement of rent or other charges shall not be applicable. If the Tenant elects to obtain such insurance coverage, the policy must be issued by an insurance carrier reasonably acceptable to the EDA, and the Tenant shall deliver to the EDA a certificate of insurance evidencing the required insurance coverage, which shall be renewed and a renewal certificate provided to the EDA no later than thirty (30) days prior to the expiration date of such insurance policy. Except for the abatement of the Rent and other charges hereinabove set forth, the Tenant shall not be entitled to, and hereby waives all claims against the EDA for any compensation or damage for loss of use of the whole or any part of the Premises and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. Notwithstanding the foregoing provisions, if damage or loss occurs to the Premises during the final two (2) years of the Initial Term or any Renewal Term, where the costs to repair such damage or loss exceeds twenty-five percent (25%) of the replacement cost of the Premises, then in that event the EDA and/or the Tenant may, at its respective election, terminate this Lease upon written notice to the other party within sixty (60) days of the date such damage or loss occurs. In the event the EDA is repairing the Premises, it shall promptly undertake such repairs and follow them through to a conclusion.

#### 16. LANDLORD'S LIEN, PROPERTY OF TENANT

All trade fixtures, personal property, equipment, inventory and merchandise belonging to the Tenant which are, or may be, put into the ~~Premises-Building~~ during the Term, whether exempt or not from sale under execution and attachment under the laws of Virginia, shall at all times be subject to, and the Tenant hereby grants to the EDA, a first priority lien and security interest in favor of the EDA, for the purpose of securing all Rent, additional rent, or other sums which may become due to the EDA from the Tenant under this Lease. For the purposes of the Tenant receiving financing, the EDA will, upon request by the Tenant, subordinate its lien priority to a Purchase Money Security Interest. All trade fixtures, personal property, equipment, inventory and merchandise belonging to the Tenant which are, or may be, put into the Taproom during the Term, whether exempt or not from sale under execution and attachment under the laws of Virginia, shall at all times be subject to, and the Tenant hereby grants to the EDA, a second priority lien and security interest in favor of the EDA, for the purpose of securing all Rent, additional rent, or other sums which may become due to the EDA from the Tenant under this Lease.

Upon default or breach of any covenants of this Lease, the EDA shall have all remedies available under the Uniform Commercial Code enacted in Virginia including, but not limited to, the right to take possession of the above mentioned property and dispose of it by sale in a commercially reasonable manner. The Tenant hereby agrees to execute financing statements and continuation statements upon a request to do so by the EDA for the purpose of recording same in the appropriate public records in order to perfect the EDA's security interest, serving notice to third parties of the security interest herein granted. Upon the failure of the Tenant to so execute upon request, the Tenant does hereby appoint the James City County Attorney's Office as Tenant's attorney in fact for said purpose. The Tenant agrees to pay, as additional rent, all filing fees, taxes and other costs and expenses incurred by the EDA in recording such financing statements.

The Tenant shall timely pay any and all taxes levied or assessed against or upon the Tenant's equipment, fixtures, furniture, leasehold improvements, and personal property located in the Premises. Provided that the Tenant is not in default hereunder, the Tenant may, prior to the expiration date of the Lease, remove all fixtures and equipment, which it has placed in the Premises; provided, however, that the Tenant shall, at its sole cost and expense, repair all damages caused by such removal. If the Tenant does not remove its property from the Premises upon

termination (for whatever cause) of this Lease, such property shall be deemed abandoned by the Tenant; and the EDA may dispose of the same in whatever manner the EDA may elect without any liability to the Tenant.

## **17. DEFAULT**

a. The happening of any of the following enumerated events shall constitute a default for which the EDA, in addition to other rights or remedies it may have, shall have the immediate right of re-entry without service of notice or resort to legal process for (a) failure of the Tenant to pay any rent due hereunder within ten (10) days after written notice to the Tenant of such failure; (b) vacation of the Premises by the Tenant or advertising by the Tenant in any manner that would indicate or lead the public to believe that the Tenant was going out of business or intending to vacate the Premises, except for periods of time during the Pre-Rent Term that Tenant is performing renovations; (c) the filing by, on behalf of or against the Tenant, of any petition or pleading to declare the Tenant insolvent for which Tenant has not moved to dismiss same within thirty (30) days; (d) the inability of the Tenant to pay its debts or meet its obligations under the laws of the United States or any state, or a receiver of the property of the Tenant is appointed, or the levy of execution or other taking of the leasehold interest of the Tenant by process of law or otherwise in satisfaction of any judgment, debt or claim against the Tenant; or (e) failure of the Tenant to perform any of the other terms, conditions, or covenants of this Lease provided that the EDA has provided thirty (30) days written notice and Tenant has failed to correct same. In the event the time to correct cannot be reasonably completed within thirty (30) days, it shall not be considered a default provided that Tenant commences correction efforts within thirty (30) days and completes same within a reasonable time period as approved in writing by the EDA.

b. Should the EDA elect to re-enter and terminate the Tenant's use of the Premises as herein provided, or should the EDA take possession pursuant to legal proceedings or pursuant to any provisions under law, the EDA may either terminate this Lease or it may, from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rent and upon such other terms and conditions as the EDA, in its reasonable discretion may deem advisable. Upon each such re-letting, all rent received by the EDA from such re-letting shall be applied, first, to the payment of any indebtedness other than Rent due hereunder from the Tenant to the EDA; second, to the payment of any costs and expenses for such repossession and re-letting, including brokerage fees and attorney's fees and costs of alterations and/or repairs; third, to the payment of Rent due and unpaid hereunder; and fourth, the residue, if any, shall be held by the EDA and applied in payment of future Rent as the same may become due and payable hereunder. If the Premises is not re-let as aforesaid, or if the rent received for such re-letting during any month be less than that to be paid during the month by the Tenant to the EDA hereunder, the Tenant shall promptly pay the rental due hereunder or any such deficiency as the case may be to the EDA. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Premises by the EDA shall be construed as an election on its part to terminate this Lease unless a written notice of such election be given to the Tenant or unless the termination be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, the EDA may at any time thereafter elect to terminate this Lease for such previous breach. The Tenant shall pay to the EDA all expenditures incurred by them in any enforcement of the provisions of this Lease including reasonable fees of attorneys and others employed by the EDA.

c. Except as expressly herein provided to the contrary, any amount due to the EDA not paid when due shall bear simple interest at the legal judgment rate.

d. All of the foregoing remedies shall be in addition to any other rights the EDA may have at law or in equity, and waiver of one default shall not be deemed to be a waiver of any subsequent default.

e. Notwithstanding the foregoing, the EDA shall make reasonable efforts to mitigate damages.

f. In the event that the EDA fails to perform any duty under this Lease, it will make repairs within thirty (30) days of notice from Tenant or the EDA shall be in default. In the event the time to correct cannot be reasonably completed within thirty (30) days, it shall not be considered a default provided that the EDA commences correction efforts within thirty (30) days and completes same within a reasonable time period. In the event of a default by the EDA, the Tenant will be entitled to any and all relief under law, including, but not limited to the right to terminate the lease and/or the right to undertake such repairs and subtract the costs thereof from the next rental payment(s) due.

## **18. INDEMNIFICATION OF EDA**

a. The EDA shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Premises or the appurtenances thereto, or for any injury or damage to the Premises, or to any property, whether belonging to the Tenant or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part or portion of the Premises or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of any or all of the hatches, openings, installations, or hallways of any kind whatsoever, or from any kind of injury which may arise from any other cause whatsoever on the Premises, including defects in construction, latent or otherwise; provided, however, that the Tenant shall not be responsible for clean-up of any Hazardous Substances (as defined herein), to the extent that such Hazardous Substances were introduced to the Premises i) by the EDA; or ii) prior to the Commencement Date and not the result of actions by the Tenant or its agents, employees, or independent contractors. The provisions of this Lease permitting the EDA, after notice, to enter and inspect the Premises are made for the purpose of enabling the EDA to become informed as to whether the Tenant is complying with the agreements, terms, covenants and conditions thereof, but the EDA is under no obligation to perform such acts as the Tenant shall fail to perform.

b. The Tenant shall indemnify and hold the EDA harmless from and against any and all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including attorneys' fees, or injury to person or property arising out of, by reason of, or in account of:

1. Any material breach, violation or nonperformance of any covenant, condition, provision or agreement in this Lease set forth and contained on the part of the Tenant to be fulfilled, kept, observed, and performed; and
2. Claims of every kind or nature, arising out of the use and occupancy of the Premises by the Tenant, including without limitation, any damage to property occasioned or arising out of the use and occupancy thereof by the Tenant, or any injury to any person, including death resulting at any time therefrom, occurring in or about the Premises.

## **19. LIMITATION OF THE EDA'S OBLIGATION**

a. The EDA shall have no liability to the Tenant by reason of any inconvenience, annoyance, or injury to business arising from the EDA or its agents in their activities, making repairs, alterations, additions or improvements in or to a portion of the Premises except by reason of the negligence of the EDA or its agents.

b. Tenant shall have the exclusive right to conduct Brewery operations at the Premises and the EDA covenants and agrees that it will not rent or lease any other EDA property at the Marina to any other tenant for use as a brewery.

#### **21-20. RESERVED RIGHTS**

The EDA explicitly reserves the following rights in addition to any other rights otherwise granted or reserved in this Lease:

a. To change the name or street address of the Premises without liability of the EDA to the Tenant.

b. To enter during the last ninety (90) days of the Term, provided the Tenant shall have removed all or substantially all of the Tenant's property from the Premises, for the purpose of altering, renovating, remodeling, repairing, or otherwise preparing the Premises for re-occupancy.

c. At any time or times the EDA, either voluntarily or pursuant to governmental requirement, may, at the EDA's own expense make repairs, alterations, or improvements in or to the Premises or any part thereof, and during operations, may close entrances, doors, corridors, or other facilities provided the Tenant shall have access to the Premises, unless there is an unforeseen emergency or the nature of the repair, alteration, or improvement makes such temporary closure before 5:00 p.m. necessary. The EDA shall make reasonable efforts to ensure that such repairs will not interfere with the Tenant's ability to conduct business, provide advance reasonable notice and to prosecute such repairs as quickly as possible so as to minimize any interference with the Tenant's quiet enjoyment.

d. To do anything that is appropriate or desirable to maintain, develop, market, or provide access to the Premises, including without limitation selling or developing all or portions of the Premises or to grant easements thereon, provided any such activity does not interfere with practices indicated in the Lease.

e. Relocate the Tenant into comparable space within the Marina at the EDA's sole option and expense. The EDA shall give the Tenant ninety (90) days notice prior to relocation and shall coordinate with the Tenant to avoid unreasonable disruption to the Brewery. The EDA shall not be liable for, and the Tenant expressly waives, any damages incidental to such relocation.

The EDA may exercise any or all of the foregoing rights hereby reserved by the EDA without being deemed guilty of an eviction or disturbance of the Tenant's use and possession and without being liable in any manner to the Tenant and without elimination or abatement of Rent, unless such interruption is prolonged and is a result of the EDA's negligence, or other compensation, and such acts shall have no effect upon this Lease.

#### **22-21. MISCELLANEOUS**

a. The failure of the either party to enforce in any one or more instances any term, condition, rule, regulation or covenant as to which the other party shall be guilty of a breach or be

in default, shall not be deemed to waive the right of the party to enforce the same or any subsequent breach or default notwithstanding that it had knowledge of such breach or default previously or at the time of the receipt of any rent or other sums by the EDA, whether the same be that originally reserved or that which may be payable under any of the covenants or agreements herein contained, or any portion thereof. The acceptance by the EDA of checks or cash from persons other than the Tenant shall in no event evidence consent of the EDA to any assignment or sub-lease by the Tenant. No waiver or modification of neither this Lease nor any release or surrender of the same shall be claimed by either party unless such waiver or modification or release or surrender be in writing and signed by the other party.

b. Each provision hereof shall bind and inure to the benefit of the EDA and the Tenant and as the case may be: if the Tenant is an individual, the Tenant's legatees, executors, and administrators; the EDA's successors and assigns; if the Tenant is a corporation, its successors; and in the event that EDA consents to the assignments of this Lease notwithstanding the terms hereof, the Tenant's assigns.

c. The parties hereto agree that whenever the word "Tenant" and/or "party" is used herein it shall be construed to mean Tenants and/or parties, if there be more than one, and generally, feminine or neuter pronouns shall be substituted for those of the masculine form, and vice versa, and the plural is to be substituted for the singular number in any place herein in which the context shall require such substitution.

d. Paragraph headings for this Lease are used for convenience only, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provision to which they refer.

#### **23.22. HOLDING OVER**

If the Tenant shall hold over after the Final Expiration Date or other termination of this Lease, such holding over shall not be deemed to be a renewal of this Lease but shall be deemed to create a tenancy-at-sufferance and by such holding over, the Tenant shall continue to be bound by all of the terms and conditions of this Lease, except that during such tenancy-at-sufferance, the Tenant shall pay to the EDA Rent at the rate equal to One Hundred Fifty Percent (150%) of that provided for in the foregoing Section 3. The increased Rent during such holding over is intended to compensate the EDA partially for losses, damages, and expenses, including frustrating and delaying the EDA's ability to secure a replacement tenant. If the EDA loses a prospective tenant or purchaser because the Tenant fails to vacate the Premises on the Expiration Date or any termination of the Lease after notice to do so, then the Tenant will be liable for such damages as the EDA can prove because of the Tenant's wrongful failure to vacate. The Tenant shall not be responsible for Holdover Rent if the Tenant renews this Lease.

#### **24.23. SEVERABILITY**

The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way effect the validity of any other provision hereof.

#### **25.24. JOINT VENTURE DISCLAIMER**

Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.

#### **26.25. SUCCESSORS AND ASSIGNS**



All parties hereto agree that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and assigns.

#### **27.26. APPLICABLE LAW, CONSTRUCTION, ATTORNEY'S FEES**

This Lease shall be construed in accordance with the laws of the Commonwealth of Virginia. If the EDA and Tenant are involved in any litigation regarding the performance of their obligations under this Lease, then each party shall be responsible for its own legal fees and expenses incurred by such party in connection with such litigation.

#### **28.27. NOTICES**

Wherever in this Lease it shall be required or permitted that permission, notice, or demand be given or served by either party to this Lease to or on the other, such notices or demands shall be deemed given or served whether actually received or not when deposited in the United States Postal Service, postage pre-paid, certified or registered mail, addressed to parties hereto at the respective addresses set forth below or any other address that may be specified by the Parties.

**Legal Notice Address for EDA:**

James City County EDA  
Attn: Secretary  
P.O. Box 8784  
Williamsburg, VA 23187-8784  
yesjcc@jamescitycountyva.gov

**With Copy to:**

County Attorney  
P.O. Box 8784  
Williamsburg, VA 23187-8784

**Tenant:**

Billsburg Brewery, Inc.  
Attn: Dave Baum  
205 Kingswood Drive  
Williamsburg, VA 23185  
dbaum23188@gmail.com

In each case when this Lease calls for an approval by the EDA, unless otherwise specified herein, such approval may be granted by the ~~Director~~ Chairman of the EDA or his designee and shall not require action by the EDA.

#### **29.28. AUTHORITY OF PARTIES**

If the Tenant is a corporation, each individual executing this lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of said corporation or in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms.

#### **30.29. PROPOSAL AND RFP; RELATIONSHIP TO LEASE AGREEMENT**

The Proposal and RFP shall be incorporated herein by reference. Any discrepancies between this Lease Agreement and the Proposal, and RFP shall be resolved in favor of the Lease Agreement, the RFP, and then the Proposal.

#### **31.30. AMENDMENTS**

This Lease may be amended by signed, written agreement of the parties or their successors in interest.

#### **32.31. FINAL UNDERSTANDING**

This Lease and all incorporated documents contains all agreements of the parties with respect to any matter mentioned herein.

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**[SIGNATURE PAGES FOLLOW]**

**ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY**

By \_\_\_\_\_

Its:

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing Lease Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201~~6~~<sup>8</sup>, by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_  
Notary Registration No. \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
EDA Attorney

**BILLSBURG BREWERY, INC.**

By \_\_\_\_\_

Its:

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing Lease Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201~~8~~<sup>6</sup>, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_  
Notary Registration No. \_\_\_\_\_

# JAMES CITY COUNTY ECONOMIC DEVELOPMENT AUTHORITY

## MARINA DEED OF LEASE

THIS AMENDED DEED OF LEASE, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the Economic Development Authority of James City County, Virginia a political subdivision of the Commonwealth of Virginia (the “EDA”), and Billsburg Brewery, Inc., a Virginia stock corporation (“Billsburg” or the “Tenant”) (each a “Party” and together, the “Parties”).

### WITNESSETH:

WHEREAS, the EDA has leased a portion of 2054 Jamestown Road, Williamsburg, Virginia 23185, further identified as James City County Tax Map Parcel Number 4640100012 (in its entirety referred to as the “Marina”) from the County of James City, Virginia (the “County”); and

WHEREAS, the EDA advertised a Request for Proposal, published December 12 and 16, 2015 (the “RFP”) to establish a commercial use at the Marina. The Tenant submitted a proposal dated January 8, 2016 (the “Proposal”). The RFP and Proposal are incorporated herein by reference.

WHEREAS, the EDA determined that the Proposal was responsive to the RFP and further determined that the Proposal was acceptable; and

WHEREAS, on August 2, 2016, the EDA leased the second story of an existing building located at the Marina to the Tenant (“Lease 1”), which lease contemplated the construction of a warehouse facility at the Marina to be occupied by the Tenant; and

WHEREAS, on December 9, 2016, the EDA leased a portion of the Marina to the Tenant, upon which a brewery building was constructed (“Lease 2”); and

WHEREAS, construction of the brewery building is complete and Billsburg is operational; and

WHEREAS, amendments to Lease 1 and Lease 2 are necessary in order to clarify terms and combine Lease 1 and Lease 2 into one comprehensive lease.

NOW, THEREFORE, in consideration of the below stated rent and other terms and conditions agreed to in this Amended Deed of Lease, which shall amend, supersede, and replace Lease 1 and Lease 2, hereinafter referred to as the “Lease,” the EDA does hereby lease to Tenant, and Tenant does hereby rent from the EDA, the following interests in the described lots, pieces, or parcels of land, together with all improvements thereon to-wit:

An exclusive leasehold interest in a portion of the Marina, being the area shown in red on the site plan titled, “JCC MARINA WAREHOUSE PREPARED FOR JAMES CITY COUNTY ECONOMIC DEVELOPMENT, JAMES CITY COUNTY, VIRGINIA,” which is attached to and made a part of this Lease as **Exhibit A**;

AND

A non-exclusive leasehold interest in the area shown in blue on Exhibit A (the "Common Area") (all together with the exclusive interest referred to as, the "Premises");

AND

A non-exclusive leasehold interest in a shared area that provides access and parking as shown in green on Exhibit A (the "Shared Area")

AND

All rights appurtenant to the Premises including, without limitation, stormwater drainage rights, and ingress and egress easements which are insurable under a leasehold title insurance policy.

TO HAVE AND TO HOLD said land and improvements thereon and the privileges and appurtenances thereunto belonging unto the Tenant, its permitted successors and assigns, for the term hereinafter provided, and upon all of the following terms and conditions, to which the parties mutually covenant and agree:

## **1. WAREHOUSE AND TAPROOM**

This Lease is executed by the Parties with the understanding that the EDA constructed a warehouse facility on the Premises consistent with County IFB # 17-11265 (with any reasonable alterations), generally shown as, "PREFABRICATED BUILDING" on Exhibit A (the "Building"). The Building shall be suitable for alteration by the Tenant at the Tenant's cost to satisfy its needs as set forth in the Proposal. Also included as part of this Lease is the second floor of the building generally shown as, "2 STORY BLOCK BUILDING 2ND FLOOR" on Exhibit A (the "Taproom") (the Building and the Taproom together referred to in this Lease as, the "Brewery Buildings").

## **2. TERM**

a. This Lease shall commence upon the signature of all parties. Rent payments as defined in Section 3 commenced upon September 1, 2017 (the "Rent Commencement Date").

b. The initial term of this Lease shall be for ten (10) years and shall end on the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date. Provided the Tenant is not in default, this Lease shall automatically renew for up to two (2) additional terms of five (5) years each (each a "Renewal Term"). The Tenant may give notice of intent to terminate this Lease upon written notice to the EDA at least one hundred and eighty (180) days prior to the expiration of the Initial Term or any Renewal Term. The Initial Term in conjunction with any Renewal Term of this Lease is referred to as the "Term." The expiration of this Lease at the end of the Term shall be referred to as the "Expiration Date." Subsequent renewals are permitted upon mutual written agreement between the parties.

### 3. RENT

During the first year of the Initial Term of this Lease, Tenant covenants to pay a base annual rental to the EDA equal to Sixty Thousand Dollars (\$60,000), which shall be payable in equal monthly installments in advance on the first day of each month in the amount of Five Thousand Dollars (\$5,000) ("Rent"). Rent shall increase by three percent (3%) for each of the first five (5) subsequent years of the Initial Term. Rent for each of the remaining four years of the Initial Term shall be equal to a base annual rent of Seventy Thousand Dollars (\$70,000), which shall be payable in equal monthly installments in advance on the first day of each month in the amount of Five Thousand Eight Hundred Thirty-three and 33/100 Dollars (\$5,833.33). Rent shall increase five percent (5%) for each Renewal Term. Rent shall be paid according to the following schedule:

YEAR	ANNUAL	MONTHLY
1	\$60,000.00	\$5,000.00
2	\$61,800.00	\$5,150.00
3	\$63,654.00	\$5,304.50
4	\$65,563.62	\$5,463.64
5	\$67,530.53	\$5,627.54
6	\$69,556.44	\$5,796.37
7	\$70,000.00	\$5,833.33
8	\$70,000.00	\$5,833.33
9	\$70,000.00	\$5,833.33
10	\$70,000.00	\$5,833.33
11	\$73,500.00	\$6,125.00
12	\$73,500.00	\$6,125.00
13	\$73,500.00	\$6,125.00
14	\$73,500.00	\$6,125.00
15	\$73,500.00	\$6,125.00
16	\$77,175.00	\$6,431.25
17	\$77,175.00	\$6,431.25
18	\$77,175.00	\$6,431.25
19	\$77,175.00	\$6,431.25
20	\$77,175.00	\$6,431.25

The rent for any terms subsequent to the Final Expiration Date of this Lease shall be as mutually agreed upon by the parties.

The Tenant shall pay Rent to the EDA, on or before the first day of each calendar month during the Term, without previous demand or notice therefore by the EDA and without set-off or deduction. In the event that Rent initially becomes due on a day other than the first of the calendar month, that payment shall be prorated and the subsequent Rent payment shall be due on the first of the following month. Notwithstanding anything contained herein to the contrary, the Tenant's obligation to pay Rent under this Lease is completely separate and independent from any of the EDA's obligations under this Lease. For each monthly Rent payment the EDA receives after the tenth (10th) day of the month, the EDA shall be entitled to, in addition to all other remedies provided in this Lease, a late charge in the amount of five percent (5%) of all Rent due for such month. Rent shall be paid to the following:

#### **4. TAXES AND ASSESSMENTS**

The Tenant shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during the term hereof. The Tenant shall be responsible for the real estate taxes assessed on the Premises. In the event any or all of the taxes for which Tenant is responsible shall be assessed and taxed to the EDA, the Tenant shall pay to the EDA its share of such taxes within ten (10) days after delivery to the Tenant by the EDA of a statement in writing setting forth the amount of such taxes applicable to the Tenant.

#### **5. USE OF PREMISES**

a. The Tenant shall be permitted to use the Premises for the uses described in the Proposal (the "Brewery"), which includes any uses permissible under ABC laws for a brewery, and those that may be approved by a majority vote of the EDA, subject to the following provisions:

- i. The Tenant must obtain the EDA's permission prior to any proposed change in the size or scope of the Brewery or prior to establishing any new use at the Premises.
- ii. The Tenant shall never make any use of the Premises which is in violation of any federal, state, or local laws, rules, or regulations, whether now existing or hereafter enacted.
- iii. The Tenant may not make any use that is or may be a nuisance or trespass or makes such insurance unavailable to the EDA on the Premises.
- iv. The Tenant shall not make exclusive use of the Common Area or Shared Area without prior written agreement of the EDA.

b. The EDA shall have the option to reserve and use the Premises without cost up to three (3) times per year subject to the following conditions:

- i. No such use shall take place on a day that the Brewery is not in operation without prior written agreement by the Tenant.
- ii. Use of the Premises shall be requested by the EDA at least sixty (60) days prior to the date of use.
- iii. All good and services provided by the Tenant shall be agreed on and compensated independent of this Lease.

c. The EDA shall have use of the Common Area as the EDA sees fit. Nothing in this Lease shall restrict the EDA's use of the Common Area.

#### **6. CONDITION OF THE PREMISES**

a. The Tenant's occupancy and use of the Premises shall be the Tenant's representation to the EDA that the Tenant has examined and inspected the same, finds the Premises to be satisfactory for the Tenant's intended use, and constitutes the Tenant's acceptance of the Premises "AS IS." The Tenant shall deliver at the end of this Lease each and every part of the Premises in good repair and condition, ordinary wear and tear and damage by insured casualty excepted. The delivery of a key or other such tender of possession of the Premises to the EDA or to an employee of the EDA prior to the expiration of the Term shall not operate as a termination of this Lease or a surrender of the Premises except upon written notice by the EDA in accordance with the terms



hereof. The Tenant shall: (i) keep the Premises in good order; (ii) make repairs and replacements to the Premises as needed because of the Tenant's or its employees' or invitees' use, misuse, or primary negligence; and (iii) not commit waste.

b. Upon termination of this Lease or vacation of the Premises by the Tenant, the Tenant shall restore the Premises to the same condition as existed at the Rent Commencement Date at Tenant's sole expense; ordinary wear and tear, alterations and improvements approved pursuant to Section 10 of this Lease, and damage by insured casualty only excepted. The EDA, however, may elect to require the Tenant to leave non-approved alterations or improvements performed by or for the Tenant unless, at the time of such alterations, the EDA agreed in writing that such alterations could be removed upon the expiration or termination of this Lease, or upon Tenant's vacation of the Premises.

## **7. SIGNS**

The Tenant may not erect, install, or display any sign or other advertising material on or about the Premises without the prior written consent of the EDA, or in conflict with any state or local laws. The Tenant shall be solely responsible for the cost to install and maintain any signs erected on the Premises.

## **8. ASSIGNMENT, SUBLETTING AND MORTGAGING**

The Tenant shall not assign this Lease or sublet or place any mortgage upon the Premises, in whole or in part, without the EDA's prior written consent. If consent to assign or sublease is obtained, no such assignment or sublease shall in any way release or relieve the Tenant from any of its covenants or undertakings contained in this Lease, and in all cases under this paragraph, the Tenant shall remain liable on this Lease during the Term. The Tenant's request for consent to any subletting or assignment of this Lease shall be accompanied by a written statement setting forth the details of the proposed sublease or assignment and any other information the EDA deems relevant. The EDA shall have the right to (a) withhold consent; (b) grant consent; or (c) terminate this Lease as of the effective date of such sublease or assignment. After ten (10) days written notice to the Tenant of the EDA's intention to terminate, the Tenant may withdraw its request for consent and this Lease shall continue with its terms. In the event the Tenant does not withdraw its request for consent to sublet or assign, the EDA may elect to enter into a direct lease with the proposed assignee or subtenant. The Tenant shall be liable for reasonable expenses incurred by the EDA in connection with an assignment, subletting, or mortgage of the Premises.

## **9. UTILITIES**

a. Until such time as Section 9(c) takes effect, electric, water, and sewer services shall be in the name of the EDA or the County, and the Tenant shall reimburse the EDA for all charges within ten (10) days of the EDA giving notice that the same have become due. All other utility services shall be contracted for directly by the Tenant. The EDA shall not be liable for any interruption or failure in the supply of any utility to the Premises and no abatement of Rent shall be allowed to the Tenant as a result thereof, unless such interruption is prolonged and is a result of the EDA's negligence, nor shall the Lease or any of the EDA's obligations be in any way affected thereby. The Tenant shall be responsible for the extension or expansion of all utilities necessary to serve any improvements made to the Premises pursuant to Section 10 of this Lease.

b. All utility charges incurred by the EDA or the County and attributable to the Brewery prior to this Amendment shall be paid by the Tenant on or before November 1, 2018 and shall be

charged to the Tenant as Additional Rent. Additional Rent for past utilities shall be One Thousand Six Hundred Seventy and 71/100 dollars (\$1,760.71) per month.

c. Upon the occurrence of (i) Major Improvement to the Taproom by the Tenant; (ii) Major Improvement of the 2 Story Block Building by the EDA or the County; or (iii) relocation of the Tenant pursuant to Section 20, the Tenant shall, at its expense, separately meter all utilities serving the Building and the Taproom (as currently located or relocated) and separately contract for such services.

## **10. IMPROVEMENTS, REPAIRS, ALTERATIONS, AND MAINTENANCE**

a. All maintenance, upkeep, and repair ("Maintenance") of the Premises shall be performed or contracted for by the Tenant at its sole expense, excepting structural repairs of the Building covered by any warranty held by the EDA. The Tenant shall not be reimbursed for any Maintenance unless otherwise agreed to in writing by the EDA. The EDA shall immediately notify the Tenant in writing of any observed site deficiencies. The Tenant shall have thirty (30) calendar days from the day of receipt of written notification to correct the deficiency. E-mail shall constitute "written notification." If the deficiency is not corrected within this time period, the EDA may procure the required goods or services from other sources and hold the Tenant responsible for any resulting additional purchase, staff, and administrative costs limited to 10% of the repairs made by the EDA. This remedy shall be in addition to other remedies which the EDA may have.

b. The EDA shall participate in any repair to the extent that such repair is covered by a warranty held on the Building. The EDA covenants and agrees that it shall comply with the maintenance obligations of its lease with the County. Subject to the terms set forth in the lease between the County and the EDA, the County shall be responsible for the repair or replacement of all aspects of the Taproom, excepting only the electric heat pump/air conditioning unit, which the Tenant accepts "AS IS." Neither the EDA nor the County shall repair or replace the existing electric heat pump/air conditioning unit in the Taproom. Neither the EDA nor the County shall be liable (and shall assess the costs thereof to the Tenant) when any repair or replacement of the Premises is made necessary by the negligent or willful acts or omission of the Tenant, its agents, invitees, or employees. The EDA shall not be liable for or have any obligation to repair or replace any improvements made to the Premises by the Tenant.

c. The Tenant may make improvements to the Brewery Buildings using its own resources. The Tenant may make non-structural alterations, additions, or improvements to the Brewery Buildings not exceeding Five Thousand Dollars (\$5,000) in cost ("Minor Improvement") without the prior written consent of the EDA. Any external Minor Improvement shall be a neutral or muted earth tone color that complements the Marina. Other than routine maintenance, the Tenant shall not make any alterations of, additions to, or changes to the Brewery Buildings that (1) exceed five thousand dollars (\$5,000) in cost, or (2) are structural ("Major Improvement") without the prior written consent of the EDA, such consent not to be unreasonably withheld. Minor Improvements that, at the EDA's sole discretion, aggregate to a Major Improvement, shall be treated as a Major Improvement under this Lease. All such Minor Improvements and Major Improvements (collectively, "Improvements") shall meet local, state, and federal requirements. The Tenant shall perform all work required to improve the Brewery Buildings to a finished condition ready for the conduct of the Tenant's business. The Tenant shall provide construction drawings to the EDA for each proposed Improvement and shall provide the EDA with a cost estimate for each. The EDA shall consider each such proposed Major Improvement and may, at its sole discretion, approve, conditionally approve, or deny each such proposed Major Improvement or any portion thereof. Upon completion of any Improvement, the Tenant shall provide the EDA with a set of as-built construction plans. Equipment and machinery shall not be deemed Improvements under this Lease.

d. The Tenant may, with the prior written consent of the EDA, make improvements to the landscaping on the Premises, such as, but not limited to, the installation of sod, mulch, plants, trees, benches, water features, etc. ("Landscape Improvements"). Any request for Landscape Improvements shall be submitted to the EDA in writing along with plans illustrating the location and type of plantings and improvements proposed. Such plans shall be submitted by the EDA to the County for review and approval by the appropriate County departments. The EDA shall, in writing, approve, conditionally approve, or deny the Landscape Improvements within forty-five (45) days of receipt of the request and illustrative plans.

e. The Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of the Tenant. Should any claim of lien or other lien be filed against the Premises by reason of any act or omission of the Tenant or any of the Tenant's agents, employees, contractors, or representatives, then the Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within forty-five (45) days after the filing thereof. The EDA shall give the Tenant notice of any lien filed against the Premises for which the EDA has actual notice. Should the Tenant fail to discharge such lien within such forty-five (45) day period, then the EDA may discharge the same, in which event the Tenant shall reimburse the EDA, on demand, the amount of the lien or the amount of the bond, if greater, plus all reasonable administrative costs incurred by the EDA in connection therewith. The remedies provided herein shall be in addition to the other remedies available to the EDA under this Lease or otherwise. The Tenant shall have no power to do any act or make any contract that may create or be the foundation of any lien, mortgage, or other encumbrance upon the reversionary or other estate of the EDA, or any interest of the EDA in the Premises. NO CONSTRUCTION LIENS OR OTHER LIENS FOR ANY LABOR, SERVICES, OR MATERIALS FURNISHED TO THE PREMISES SHALL ATTACH TO OR AFFECT THE INTEREST OF EDA IN AND TO THE PREMISES.

f. Upon expiration or earlier termination of this Lease, the Tenant's leasehold interest in the Premises shall terminate and title to the Improvements shall automatically pass to, vest, belong to, and become the property of the EDA. The Tenant shall, if the EDA shall deem it appropriate, execute any further documents to confirm this transfer of title to the EDA with cost of charge to the EDA. The Tenant shall be responsible for the removal of its personal property, upon expiration or earlier termination of this Lease, provided that the Tenant shall be responsible for the cost of repair of any damage caused by the removal. The EDA and Tenant shall negotiate in good faith with regard to the removal of equipment and machinery and/or the sale of same to the EDA.

g. The Tenant shall, on the last day of the term, or upon the sooner termination of this Lease, peaceably and quietly surrender the Premises and equipment to the EDA, broom-clean, including all Improvements, alterations, rebuildings, replacements, changes, or additions placed by the Tenant thereon, in as good condition and repair as the same were in at the commencement of the original term, normal wear and tear and damage by insured casualty excepted.

## **11. EMINENT DOMAIN**

If all of the Premises, or such part thereof as will make the same unusable for the purposes contemplated by this Lease, be taken under the power of eminent domain (or a conveyance in lieu thereof), then this Lease shall terminate as of the date possession is taken by the condemnor, and Rent shall be adjusted between the EDA and the Tenant as of such date. If only a portion of the Premises is taken and the Tenant can continue use of the remainder, then this Lease will not terminate, but Rent shall abate in a just and proportionate amount to the loss of use occasioned by the taking.

The EDA shall be entitled to the entire proceeds of any condemnation award; provided, however, that Tenant may pursue a separate claim for the book value less depreciation of Improvements placed on the Premises by Tenant at its own expense, as shown on Tenant's most recent federal income tax return or as certified as a book value amount by Tenant, adjusted for subsequent additions and depreciation to the date of such condemnation, plus amounts, to compensate Tenant for expenses special to Tenant provided the foregoing does not reduce the EDA's award.

## **12. ACCESS TO PREMISES**

a. The EDA shall have the right, upon twenty four (24) hours prior notice to the Tenant (except in the case of an emergency, in which event the EDA shall have the right to enter the Premises as the EDA reasonably deems necessary), either itself or through its authorized agents, to enter the Premises (i) for the purposes of inspection, (ii) to make repairs, alterations or changes as EDA deems necessary after the Tenant has neglected its obligations under this Lease, and (iii) to show the Premises to prospective lessees, mortgagees, and/or purchasers. The EDA shall have the right, either itself or through its authorized agents, to place signs in conspicuous places about the Premises and to otherwise advertise the Premises for sale or rent, and to enter the Premises at all reasonable times for inspection to show prospective lessees, mortgagees, and/or purchasers if within one hundred eighty (180) days prior to the Expiration Date as extended by any exercised option for a Renewal Term.

b. The Tenant, its agents, employees, invitees, and guests, shall have the right of ingress and egress to the Common Area, Shared Area, and public areas of the Marina, provided the EDA and the County may regulate and control such access, or as needed for making repairs and alterations.

c. The EDA shall furnish the Tenant with a key to the Building and the Taproom. All keys to the Building and Taproom shall remain the property of the EDA. No additional locks shall be allowed on any door of the Building or the Taproom without the EDA's written permission, which shall not be unreasonably withheld. Notwithstanding the foregoing, the Tenant may install locks on the doors of individual offices within the Building or the Taproom, provided that the Tenant shall provide a copy of any such keys to the EDA. The Tenant shall supply the EDA with a copy of any keys necessary to access the Building and the Taproom. Upon termination of this Lease, the Tenant shall surrender to the EDA all keys to the Building and the Taproom, and give to the EDA the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, in the Building and the Taproom.

d. During the Brewery's normal operating hours, the Tenant shall keep the bathrooms located in the Taproom open for use by those using the County's park facilities at the Marina.

## **13. HAZARDOUS SUBSTANCE**

a. The Tenant shall not knowingly cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Premises by the Tenant, the Tenant's agents, employees, or contractors without the prior express written consent of the EDA.

b. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive or corrosive and that is or becomes regulated by any local government, the Commonwealth of Virginia or the United States Government. "Hazardous Substance" also includes any and all materials or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local law or becomes

regulated by any federal, state or local authority. "Hazardous Substance" includes, but is not restricted to, asbestos, polychlorinated biphenyl's (PCB's), solvents, printing inks, pesticides, solvents, and leads. "Hazardous Substance" excludes petroleum products when said petroleum products are stored and dispensed in accordance with all federal, state, and local laws and regulations. Notwithstanding the foregoing, ordinary items such as propane, paint, cleaning supplies, etc. shall not be deemed Hazardous Substances.

c. The Tenant shall provide the EDA, in a timely manner, a Safety Data Sheet ("SDS") upon the EDA's request. Said SDS shall describe the chemical properties of any hazardous substances which may be used, stored, generated, or disposed of on or in the Premises.

#### **14. INSURANCE**

a. At all times during the Lease, at its own cost and expense, the Tenant shall keep or cause to be kept on all Improvements, alterations, renovations, replacements, substitutions, changes, equipment, fixtures, motors, and machinery owned or leased by the Tenant and installed in or used in connection with the Premises, insurance against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered), flood and such other hazards, casualties, risks, and contingencies now covered by or that may hereafter be considered, as included within the standard form extended coverage endorsement, in an amount equal to the actual replacement cost (the "Full Insurable Value") and sufficient so that no co-insurance penalty shall be invoked in case of loss. Such Full Insurable Value shall be determined from time to time at the request of the EDA (no more often than once every year) but at the expense of the Tenant by the fire insurance company carrying the highest amount of fire insurance on the Premises or its agent, or by an appraiser selected by the Tenant that is experienced in insurance appraisals who is approved in writing by the EDA which approval shall not be unreasonably withheld. The failure of the EDA to request such appraisal shall not release the Tenant from its obligations hereunder.

b. At all times during the Lease, at its own cost and expense, the Tenant shall provide and keep in force comprehensive general liability insurance in standard form, protecting the Tenant and naming the EDA as an additional insured, on a primary basis with no participation required by the EDA's liability policy, against personal injury, including without limitation, products and completed operations, personal and advertising injury, bodily injury, death, or property damage and contractual liability on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. If the Tenant maintains broader coverage and/or higher limits than the minimums shown above, the EDA requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the EDA. The EDA reserves the right to amend these limits from time to time during the course of the Lease. All such policies shall cover the entire Premises and any improvements thereon, including parking, common areas, means of access, and roadways therein, and streets and sidewalks adjacent thereto.

c. At all times during the Lease when the Tenant is engaged in the construction or reconstruction of any Improvement, or repairs thereof, at its own cost and expense, the Tenant shall provide and keep in force for the benefit of the EDA and the Tenant, "all risk" builders risk insurance on the Premises and all Improvement(s) under construction naming the EDA as a loss payee on the policy.

d. At all times during the Lease, at its own cost and expense, the Tenant shall purchase and keep in force worker's compensation insurance and employer's liability insurance for all employees of the Tenant in strict compliance with the laws of the Commonwealth of Virginia in

the following minimum amounts: Coverage A – Statutory, Coverage B - \$100,000/\$100,000/\$500,000.

e. All of the policies of insurance required by this Lease shall be i) in form and substance as reasonably approved by the EDA; ii) underwritten only by companies licensed in the Commonwealth of Virginia which have a then-current Alfred M. Best Company, Inc. (or if it no longer exists, a then comparable rating service) general policyholder's rating of A or better (or the equivalent thereof) and a financial rating of VII or better (or the equivalent thereof); iii) accompanied by evidence of payment of premiums thereon to the insurance companies or their agents, including evidence of current annual payment, if on an installment payment basis; iv) contain standard waiver of subrogation clauses; and v) provide that they may not be canceled by the insurer for non-payment of premiums or otherwise until at least thirty (30) days after a receipt of the proposed cancellation, and in any event, shall not be invalidated, as to the interests of the Tenant therein, by any act, omission or neglect of the Tenant (other than nonpayment of premiums), which might otherwise result in a forfeiture or suspension of such insurance, including without limitation, the occupation or use of the Premises for purposes more hazardous than those permitted by the terms of the policy, any foreclosure of any leasehold deed of trust and any change in title or ownership of the Premises. If requested by the EDA, copies of all insurance policies required by this Lease shall be delivered by the Tenant to the EDA. All insurance policies shall be renewed by the Tenant and proof of such renewals, including appropriate endorsement page(s), accompanied by evidence of the payments of the premiums thereon to the insurance companies or their agents, shall be delivered to the EDA, at least twenty (20) days prior to their respective expiration dates. All self-insured retentions, deductibles and aggregate limits on any required insurance must be disclosed and approved by the EDA.

f. The EDA and the Tenant mutually release and discharge each other (as well as the officers, directors, partners, agents and employees of each other) from responsibility and liability (by way of subrogation or otherwise) for loss or damage to any building, structure, equipment, or other real or personal property of the other, or any resulting loss of income or business, that may arise from a fire or other casualty or is otherwise covered by insurance. The above releases also shall apply to any third party, including any insurance company, claiming through or under a party as a result of a right of subrogation. All casualty insurance policies required to be maintained under this Lease shall contain "waiver of subrogation" clauses to carry out these release provisions.

## **15. DAMAGE TO PREMISES**

If, by reason of such fire or other casualty, the Premises is rendered wholly untenable, the Rent and other charges payable by the Tenant shall be fully abated, or if only partially damaged, such rent and other charges shall be abated proportionately as to that portion of the Premises rendered untenable, in either event (unless the Lease is terminated, as aforesaid) from the date of such casualty until (i) occupancy of the Premises by Tenant; (ii) the date the EDA has the Premises ready for occupancy by the Tenant provided the Tenant has been given at least fourteen (14) days' notice of same, or (iii) the date the EDA could have had the Premises ready had there been no delays attributable to the Tenant. The Tenant shall continue the operation of the Tenant's business in the Premises or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management. However, if such damages or other casualty shall be caused by the negligence or other wrongful conduct of the Tenant or of the Tenant's subtenants, licensees, contractors, or invitees, or their respective agents or employees, there shall be no abatement of Rent or other charges. Notwithstanding the foregoing, the Tenant may elect to obtain loss of rents insurance coverage covering a period of no less than twelve (12) months, in which event the preceding sentence stating that there shall be no abatement of rent or other charges shall not be applicable. If the Tenant elects to obtain such insurance

coverage, the policy must be issued by an insurance carrier reasonably acceptable to the EDA, and the Tenant shall deliver to the EDA a certificate of insurance evidencing the required insurance coverage, which shall be renewed and a renewal certificate provided to the EDA no later than thirty (30) days prior to the expiration date of such insurance policy. Except for the abatement of the Rent and other charges hereinabove set forth, the Tenant shall not be entitled to, and hereby waives all claims against the EDA for any compensation or damage for loss of use of the whole or any part of the Premises and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. Notwithstanding the foregoing provisions, if damage or loss occurs to the Premises during the final two (2) years of the Initial Term or any Renewal Term, where the costs to repair such damage or loss exceeds twenty-five percent (25%) of the replacement cost of the Premises, then in that event the EDA and/or the Tenant may, at its respective election, terminate this Lease upon written notice to the other party within sixty (60) days of the date such damage or loss occurs. In the event the EDA is repairing the Premises, it shall promptly undertake such repairs and follow them through to a conclusion.

## **16. LANDLORD'S LIEN, PROPERTY OF TENANT**

All trade fixtures, personal property, equipment, inventory and merchandise belonging to the Tenant which are, or may be, put into the Building during the Term, whether exempt or not from sale under execution and attachment under the laws of Virginia, shall at all times be subject to, and the Tenant hereby grants to the EDA, a first priority lien and security interest in favor of the EDA, for the purpose of securing all Rent, additional rent, or other sums which may become due to the EDA from the Tenant under this Lease. For the purposes of the Tenant receiving financing, the EDA will, upon request by the Tenant, subordinate its lien priority to a Purchase Money Security Interest. All trade fixtures, personal property, equipment, inventory and merchandise belonging to the Tenant which are, or may be, put into the Taproom during the Term, whether exempt or not from sale under execution and attachment under the laws of Virginia, shall at all times be subject to, and the Tenant hereby grants to the EDA, a second priority lien and security interest in favor of the EDA, for the purpose of securing all Rent, additional rent, or other sums which may become due to the EDA from the Tenant under this Lease.

Upon default or breach of any covenants of this Lease, the EDA shall have all remedies available under the Uniform Commercial Code enacted in Virginia including, but not limited to, the right to take possession of the above mentioned property and dispose of it by sale in a commercially reasonable manner. The Tenant hereby agrees to execute financing statements and continuation statements upon a request to do so by the EDA for the purpose of recording same in the appropriate public records in order to perfect the EDA's security interest, serving notice to third parties of the security interest herein granted. Upon the failure of the Tenant to so execute upon request, the Tenant does hereby appoint the James City County Attorney's Office as Tenant's attorney in fact for said purpose. The Tenant agrees to pay, as additional rent, all filing fees, taxes and other costs and expenses incurred by the EDA in recording such financing statements.

The Tenant shall timely pay any and all taxes levied or assessed against or upon the Tenant's equipment, fixtures, furniture, leasehold improvements, and personal property located in the Premises. Provided that the Tenant is not in default hereunder, the Tenant may, prior to the expiration date of the Lease, remove all fixtures and equipment, which it has placed in the Premises; provided, however, that the Tenant shall, at its sole cost and expense, repair all damages caused by such removal. If the Tenant does not remove its property from the Premises upon termination (for whatever cause) of this Lease, such property shall be deemed abandoned by the Tenant; and the EDA may dispose of the same in whatever manner the EDA may elect without any liability to the Tenant.

## 17. DEFAULT

a. The happening of any of the following enumerated events shall constitute a default for which the EDA, in addition to other rights or remedies it may have, shall have the immediate right of re-entry without service of notice or resort to legal process for (a) failure of the Tenant to pay any rent due hereunder within ten (10) days after written notice to the Tenant of such failure; (b) vacation of the Premises by the Tenant or advertising by the Tenant in any manner that would indicate or lead the public to believe that the Tenant was going out of business or intending to vacate the Premises, except for periods of time during the Pre-Rent Term that Tenant is performing renovations; (c) the filing by, on behalf of or against the Tenant, of any petition or pleading to declare the Tenant insolvent for which Tenant has not moved to dismiss same within thirty (30) days; (d) the inability of the Tenant to pay its debts or meet its obligations under the laws of the United States or any state, or a receiver of the property of the Tenant is appointed, or the levy of execution or other taking of the leasehold interest of the Tenant by process of law or otherwise in satisfaction of any judgment, debt or claim against the Tenant; or (e) failure of the Tenant to perform any of the other terms, conditions, or covenants of this Lease provided that the EDA has provided thirty (30) days written notice and Tenant has failed to correct same. In the event the time to correct cannot be reasonably completed within thirty (30) days, it shall not be considered a default provided that Tenant commences correction efforts within thirty (30) days and completes same within a reasonable time period as approved in writing by the EDA.

b. Should the EDA elect to re-enter and terminate the Tenant's use of the Premises as herein provided, or should the EDA take possession pursuant to legal proceedings or pursuant to any provisions under law, the EDA may either terminate this Lease or it may, from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rent and upon such other terms and conditions as the EDA, in its reasonable discretion may deem advisable. Upon each such re-letting, all rent received by the EDA from such re-letting shall be applied, first, to the payment of any indebtedness other than Rent due hereunder from the Tenant to the EDA; second, to the payment of any costs and expenses for such repossession and re-letting, including brokerage fees and attorney's fees and costs of alterations and/or repairs; third, to the payment of Rent due and unpaid hereunder; and fourth, the residue, if any, shall be held by the EDA and applied in payment of future Rent as the same may become due and payable hereunder. If the Premises is not re-let as aforesaid, or if the rent received for such re-letting during any month be less than that to be paid during the month by the Tenant to the EDA hereunder, the Tenant shall promptly pay the rental due hereunder or any such deficiency as the case may be to the EDA. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Premises by the EDA shall be construed as an election on its part to terminate this Lease unless a written notice of such election be given to the Tenant or unless the termination be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, the EDA may at any time thereafter elect to terminate this Lease for such previous breach. The Tenant shall pay to the EDA all expenditures incurred by them in any enforcement of the provisions of this Lease including reasonable fees of attorneys and others employed by the EDA.

c. Except as expressly herein provided to the contrary, any amount due to the EDA not paid when due shall bear simple interest at the legal judgment rate.

d. All of the foregoing remedies shall be in addition to any other rights the EDA may have at law or in equity, and waiver of one default shall not be deemed to be a waiver of any subsequent default.



e. Notwithstanding the foregoing, the EDA shall make reasonable efforts to mitigate damages.

f. In the event that the EDA fails to perform any duty under this Lease, it will make repairs within thirty (30) days of notice from Tenant or the EDA shall be in default. In the event the time to correct cannot be reasonably completed within thirty (30) days, it shall not be considered a default provided that the EDA commences correction efforts within thirty (30) days and completes same within a reasonable time period. In the event of a default by the EDA, the Tenant will be entitled to any and all relief under law, including, but not limited to the right to terminate the lease and/or the right to undertake such repairs and subtract the costs thereof from the next rental payment(s) due.

## **18. INDEMNIFICATION OF EDA**

a. The EDA shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Premises or the appurtenances thereto, or for any injury or damage to the Premises, or to any property, whether belonging to the Tenant or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part or portion of the Premises or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of any or all of the hatches, openings, installations, or hallways of any kind whatsoever, or from any kind of injury which may arise from any other cause whatsoever on the Premises, including defects in construction, latent or otherwise; provided, however, that the Tenant shall not be responsible for clean-up of any Hazardous Substances (as defined herein), to the extent that such Hazardous Substances were introduced to the Premises i) by the EDA; or ii) prior to the Commencement Date and not the result of actions by the Tenant or its agents, employees, or independent contractors. The provisions of this Lease permitting the EDA, after notice, to enter and inspect the Premises are made for the purpose of enabling the EDA to become informed as to whether the Tenant is complying with the agreements, terms, covenants and conditions thereof, but the EDA is under no obligation to perform such acts as the Tenant shall fail to perform.

b. The Tenant shall indemnify and hold the EDA harmless from and against any and all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including attorneys' fees, or injury to person or property arising out of, by reason of, or in account of:

1. Any material breach, violation or nonperformance of any covenant, condition, provision or agreement in this Lease set forth and contained on the part of the Tenant to be fulfilled, kept, observed, and performed; and
2. Claims of every kind or nature, arising out of the use and occupancy of the Premises by the Tenant, including without limitation, any damage to property occasioned or arising out of the use and occupancy thereof by the Tenant, or any injury to any person, including death resulting at any time therefrom, occurring in or about the Premises.

## **19. LIMITATION OF THE EDA'S OBLIGATION**

a. The EDA shall have no liability to the Tenant by reason of any inconvenience, annoyance, or injury to business arising from the EDA or its agents in their activities, making repairs, alterations, additions or improvements in or to a portion of the Premises except by reason of the negligence of the EDA or its agents.

b. Tenant shall have the exclusive right to conduct Brewery operations at the Premises and the EDA covenants and agrees that it will not rent or lease any other EDA property at the Marina to any other tenant for use as a brewery.

## **20. RESERVED RIGHTS**

The EDA explicitly reserves the following rights in addition to any other rights otherwise granted or reserved in this Lease:

a. To change the name or street address of the Premises without liability of the EDA to the Tenant.

b. To enter during the last ninety (90) days of the Term, provided the Tenant shall have removed all or substantially all of the Tenant's property from the Premises, for the purpose of altering, renovating, remodeling, repairing, or otherwise preparing the Premises for re-occupancy.

c. At any time or times the EDA, either voluntarily or pursuant to governmental requirement, may, at the EDA's own expense make repairs, alterations, or improvements in or to the Premises or any part thereof, and during operations, may close entrances, doors, corridors, or other facilities provided the Tenant shall have access to the Premises, unless there is an unforeseen emergency or the nature of the repair, alteration, or improvement makes such temporary closure before 5:00 p.m. necessary. The EDA shall make reasonable efforts to ensure that such repairs will not interfere with the Tenant's ability to conduct business, provide advance reasonable notice and to prosecute such repairs as quickly as possible so as to minimize any interference with the Tenant's quiet enjoyment.

d. To do anything that is appropriate or desirable to maintain, develop, market, or provide access to the Premises, including without limitation selling or developing all or portions of the Premises or to grant easements thereon, provided any such activity does not interfere with practices indicated in the Lease.

e. Relocate the Tenant into comparable space within the Marina at the EDA's sole option and expense. The EDA shall give the Tenant ninety (90) days notice prior to relocation and shall coordinate with the Tenant to avoid unreasonable disruption to the Brewery. The EDA shall not be liable for, and the Tenant expressly waives, any damages incidental to such relocation.

The EDA may exercise any or all of the foregoing rights hereby reserved by the EDA without being deemed guilty of an eviction or disturbance of the Tenant's use and possession and without being liable in any manner to the Tenant and without elimination or abatement of Rent, unless such interruption is prolonged and is a result of the EDA's negligence, or other compensation, and such acts shall have no effect upon this Lease.

## **21. MISCELLANEOUS**

a. The failure of the either party to enforce in any one or more instances any term, condition, rule, regulation or covenant as to which the other party shall be guilty of a breach or be in default, shall not be deemed to waive the right of the party to enforce the same or any subsequent breach or default notwithstanding that it had knowledge of such breach or default previously or at the time of the receipt of any rent or other sums by the EDA, whether the same be that originally reserved or that which may be payable under any of the covenants or agreements herein contained, or any portion thereof. The acceptance by the EDA of checks or cash from persons other than the Tenant shall in no event evidence consent of the EDA to any assignment or sub-lease by the

Tenant. No waiver or modification of neither this Lease nor any release or surrender of the same shall be claimed by either party unless such waiver or modification or release or surrender be in writing and signed by the other party.

b. Each provision hereof shall bind and inure to the benefit of the EDA and the Tenant and as the case may be: if the Tenant is an individual, the Tenant's legatees, executors, and administrators; the EDA's successors and assigns; if the Tenant is a corporation, its successors; and in the event that EDA consents to the assignments of this Lease notwithstanding the terms hereof, the Tenant's assigns.

c. The parties hereto agree that whenever the word "Tenant" and/or "party" is used herein it shall be construed to mean Tenants and/or parties, if there be more than one, and generally, feminine or neuter pronouns shall be substituted for those of the masculine form, and vice versa, and the plural is to be substituted for the singular number in any place herein in which the context shall require such substitution.

d. Paragraph headings for this Lease are used for convenience only, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provision to which they refer.

## **22. HOLDING OVER**

If the Tenant shall hold over after the Final Expiration Date or other termination of this Lease, such holding over shall not be deemed to be a renewal of this Lease but shall be deemed to create a tenancy-at-sufferance and by such holding over, the Tenant shall continue to be bound by all of the terms and conditions of this Lease, except that during such tenancy-at-sufferance, the Tenant shall pay to the EDA Rent at the rate equal to One Hundred Fifty Percent (150%) of that provided for in the foregoing Section 3. The increased Rent during such holding over is intended to compensate the EDA partially for losses, damages, and expenses, including frustrating and delaying the EDA's ability to secure a replacement tenant. If the EDA loses a prospective tenant or purchaser because the Tenant fails to vacate the Premises on the Expiration Date or any termination of the Lease after notice to do so, then the Tenant will be liable for such damages as the EDA can prove because of the Tenant's wrongful failure to vacate. The Tenant shall not be responsible for Holdover Rent if the Tenant renews this Lease.

## **23. SEVERABILITY**

The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way effect the validity of any other provision hereof.

## **24. JOINT VENTURE DISCLAIMER**

Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.

## **25. SUCCESSORS AND ASSIGNS**

All parties hereto agree that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and assigns.

## **26. APPLICABLE LAW, CONSTRUCTION, ATTORNEY'S FEES**

This Lease shall be construed in accordance with the laws of the Commonwealth of Virginia. If the EDA and Tenant are involved in any litigation regarding the performance of their obligations under this Lease, then each party shall be responsible for its own legal fees and expenses incurred by such party in connection with such litigation.

## **27. NOTICES**

Wherever in this Lease it shall be required or permitted that permission, notice, or demand be given or served by either party to this Lease to or on the other, such notices or demands shall be deemed given or served whether actually received or not when deposited in the United States Postal Service, postage pre-paid, certified or registered mail, addressed to parties hereto at the respective addresses set forth below or any other address that may be specified by the Parties.

### **Legal Notice Address for EDA:**

James City County EDA  
Attn: Secretary  
P.O. Box 8784  
Williamsburg, VA 23187-8784  
yesjcc@jamescitycountyva.gov

### **With Copy to:**

County Attorney  
P.O. Box 8784  
Williamsburg, VA 23187-8784

### **Tenant:**

Billsburg Brewery, Inc.  
Attn: Dave Baum  
205 Kingswood Drive  
Williamsburg, VA 23185  
dbaum23188@gmail.com

In each case when this Lease calls for an approval by the EDA, unless otherwise specified herein, such approval may be granted by the Chairman of the EDA or his designee and shall not require action by the EDA.

## **28. AUTHORITY OF PARTIES**

If the Tenant is a corporation, each individual executing this lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of said corporation or in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms.

## **29. PROPOSAL AND RFP; RELATIONSHIP TO LEASE AGREEMENT**

The Proposal and RFP shall be incorporated herein by reference. Any discrepancies between this Lease Agreement and the Proposal, and RFP shall be resolved in favor of the Lease Agreement, the RFP, and then the Proposal.

### **30. AMENDMENTS**

This Lease may be amended by signed, written agreement of the parties or their successors in interest.

### **31. FINAL UNDERSTANDING**

This Lease and all incorporated documents contains all agreements of the parties with respect to any matter mentioned herein.

**[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGES FOLLOW]**

**ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY**

By \_\_\_\_\_

Its:

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing Lease Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

Notary Registration No. \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
EDA Attorney

**BILLSBURG BREWERY, INC.**

By \_\_\_\_\_

Its:

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

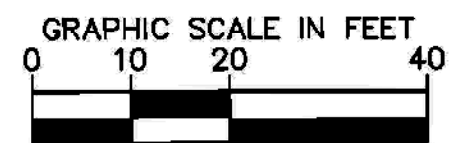
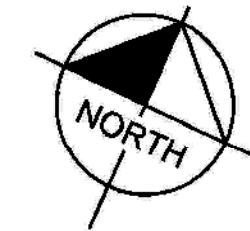
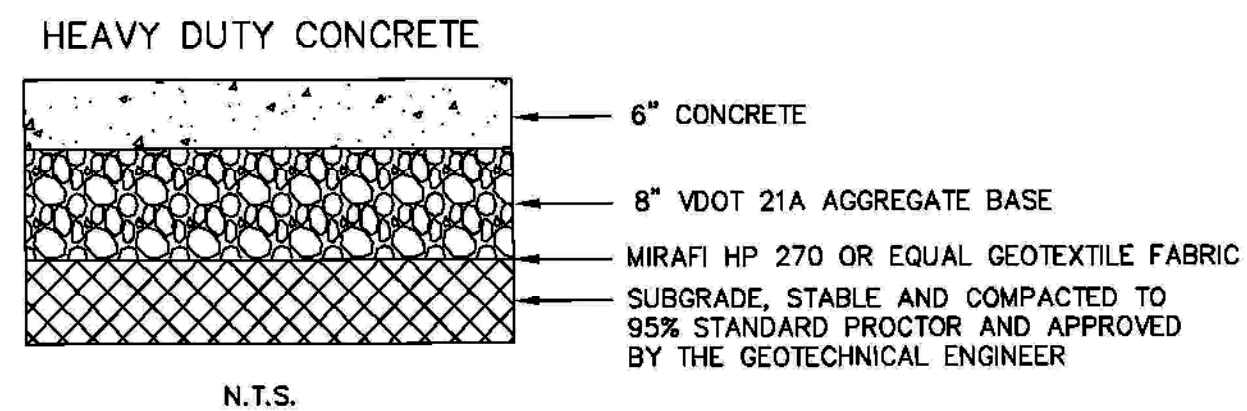
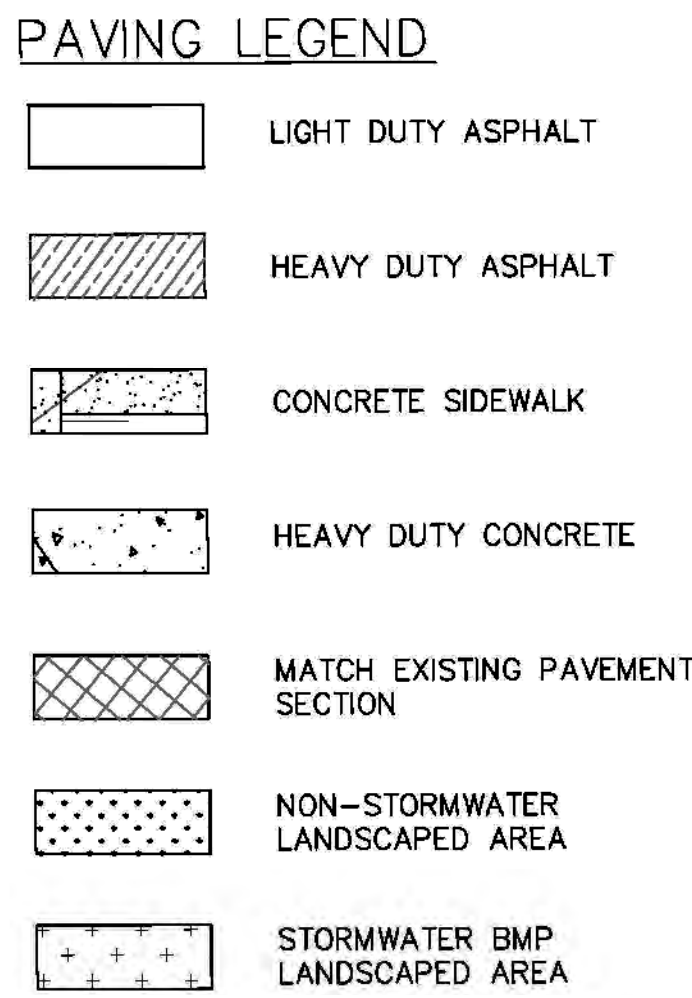
The foregoing Lease Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

Notary Registration No. \_\_\_\_\_





SHEET NUMBER  
**CS101**



# BILLSBURG BREWERY

## TENANT IMPROVEMENTS TO JCC MARINA WAREHOUSE BUILDING

### JAMES CITY COUNTY, VIRGINIA

#### BUILDING CODE SUMMARY

ALL CONSTRUCTION SHALL COMPLY WITH THE REQUIREMENTS OF THE VIRGINIA UNIFORM STATE BUILDING CODE AND INTERNATIONAL BUILDING CODE 2012 EDITION.

PROJECT NAME: BILLSBURG BREWERY  
TENANT IMPROVEMENTS TO JCC MARINA WAREHOUSE BUILDING  
ADDRESS: WILLIAMSBURG, VIRGINIA 23186

#### DESIGNER OF RECORD

NAME: GUERNSEY TINGLE  
FIRM: GUERNSEY TINGLE  
ADDRESS: 1757 220 0220

#### BUILDING DATA

UNOCCUPIED BASED USE OCCUPANCY CLASSIFICATION: LOW-HAZARD FACTORY INDUSTRIAL (F-4)  
THE BUILDING IS CONSIDERED A NON-SEPARATED BASED USE BUILDING PER SECTION 503.2 OF THE 2012 IBC.

BASED USE OCCUPANCY CLASSIFICATION: LOW-HAZARD FACTORY INDUSTRIAL (F-4)  
BASED USE OCCUPANCY CLASSIFICATION: LOW-HAZARD FACTORY INDUSTRIAL (F-4)  
BASED USE OCCUPANCY CLASSIFICATION: LOW-HAZARD FACTORY INDUSTRIAL (F-4)

#### OCCUPANCY

S-1 STORAGE	(1,300)	2 OCCUPANTS
F-4 FACTORY	(1,100)	(1) OCCUPANTS
TOTAL OCCUPANT LOAD		

#### FIRE RESISTANCE RATINGS

STRUCTURAL FRAMES: (1) HOUR RATING  
EXTERIOR NON-BEARING WALLS: (0) HOUR RATING  
INTERIOR NON-BEARING WALLS: (0) HOUR RATING  
CEILING/ROOF ASSEMBLY: (0) HOUR RATING  
FLOOR/ROOF ASSEMBLY: (0) HOUR RATING  
FIRE PARTITION: (0) HOUR RATING  
FIRE BARRIER: (0) HOUR RATING

#### LIFE SAFETY SYSTEM

EMERGENCY LIGHTING: NOT REQUIRED  
TACTILE SIGNS ONLY: NOT REQUIRED  
SMOKE DETECTION SYSTEM: NOT REQUIRED

#### EXIT REQUIREMENTS

NUMBER OF EXITS REQUIRED (2012 VCC TABLE 1015.1): 1 EXIT, 2 EXITS PROVIDED  
MINIMUM EXIT ACCESS TRAVEL DISTANCE: 200'-0" (2012 VCC TABLE 1016.2)  
MAXIMUM EXIT ACCESS TRAVEL DISTANCE: 200'-0" (2012 VCC TABLE 1016.2)  
DEAD END LIMIT - MAXIMUM CONDITION: 20'-0" (2012 VCC SECTION 1016.4)

#### ROOF FIRE CLASSIFICATION

ROOF COVERING CLASSIFICATION: CLASS C, MINIMUM



#### INTERIOR FINISHES

SMOKE DEVELOPMENT:	(B) 0-450
ROOF LIVE LOAD:	(C) 1-400
ROOF DEAD LOAD:	(C) 1-400
ROOF LIVE LOAD:	(C) 1-400
ROOF DEAD LOAD:	(C) 1-400
ROOF LIVE LOAD:	(C) 1-400
ROOF DEAD LOAD:	(C) 1-400

#### DESIGN LOADS

ROOF LIVE LOAD:	20 PSF
ROOF DEAD LOAD:	40 PSF
FLOOR LIVE LOAD:	40 PSF
FLOOR DEAD LOAD:	20 PSF
WIND LOAD:	115 MPH, EXPOSURE 'C'
WIND IMPORTANCE FACTOR:	1.0 (HURRICANE PRONE WIND-100 MPH)
SEISMIC:	TO BE DETERMINED BY METAL BUILDING ENGINEER

#### SOIL BEARING PRESSURE

DESIGN FOR 3,000 PSF CAPACITY. REFERENCE GEOTECHNICAL ENGINEERING REPORT PREPARED BY GET SOLUTIONS, INC. DATED AUGUST 16, 2016.

#### THERMAL ENVELOPE

ROOF: R-30 MINIMUM UNEXPOSED INSULATION AT ROOF STRUCTURE AND CONTIGUOUS R-6 MINIMUM INSULATION FOR THERMAL BREAK  
EXTERIOR WALLS: R-10 MINIMUM UNEXPOSED INSULATION AT WALL STRUCTURE AND CONTIGUOUS R-6 MINIMUM INSULATION FOR THERMAL BREAK  
FLOOR SLAB ON GRADE: R-10 MINIMUM UNEXPOSED INSULATION AT FLOOR STRUCTURE AND CONTIGUOUS R-6 MINIMUM INSULATION FOR THERMAL BREAK  
GLAZE: INSULATED, LOW-E GLAZING

#### SCHEDULE OF DRAWINGS

T1.01	TITLE SHEET, SITE LOCATION, GENERAL NOTES
A2.01	SLAB INVERT PLAN
A2.02	FLOOR PLAN
A2.03	WALL TYPES AND ADA DIAGRAMS
A5.01	BUILDING SECTION
A7.01	DOOR AND WINDOW SCHEDULE, INTERIOR ELEVATIONS
E2.01	BASE ELECTRICAL LAYOUT

#### NOTE:

THE TENANT BUILDOUT FOR THIS SPACE IS A DESIGN-BUILD PROJECT.  
PLUMBING, MECHANICAL, AND ELECTRICAL CONTRACTORS WILL BE SELECTED BY THE CONTRACTOR. THE CONTRACTOR SHALL COORDINATE WITH THE TENANT'S SUPPLIER FOR TENANT-SUPPLIED BREWING EQUIPMENT AND SYSTEMS TO BE INSTALLED BY THE CONTRACTOR.

Discipline	Reviewer	Results	Date
Electrical	BT	OK	3/24/17
Plumbing	BT	OK	3/24/17
Mechanical	BT	OK	3/24/17
Structural	BT	OK	3/24/17
General	BT	OK	3/24/17

#### GENERAL NOTES:

- THESE DOCUMENTS ARE INTENDED TO SUPPLEMENT THE SELECTED METAL BUILDING MANUFACTURER'S CONSTRUCTION DOCUMENTS. DETAILING OF METAL BUILDING COMPONENTS ARE NOT CONTAINED WITHIN. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO PROVIDE A COMPLETED BUILDING, READY FOR OCCUPANCY, CONSISTENT WITH THE CONSTRUCTION DOCUMENTS, INCLUDING ANY ADDITIONAL CONSTRUCTION DOCUMENTS REQUIRED FOR PERMITS AND APPROVALS.
- THE CONTRACTOR SHALL SECURE AND PAY FOR ALL PERMITS, INSPECTIONS AND APPROVALS. TAP FEES AND PERMANENT UTILITY PICK-UP FEES SHALL BE PAID FOR BY THE OWNER.
- UNLESS OTHERWISE INDICATED, DIMENSIONS ARE TAKEN FROM FACE OF CHAL. FACE OF STEEL FRAME, OR FACE OF EXTERIOR SHEATHING AT EXTERIOR WALLS, AND FROM FACE OF STUD AT INTERIOR WALLS, AND TO THE FACE OF FINISHED WALL AT INTERIOR ELEVATIONS.
- THE WORD "PROVIDE" AS USED HEREINAFTER SHALL BE DEFINED TO MEAN THE FURNISHING OF MATERIALS, LABOR, EQUIPMENT AND SERVICES NECESSARY TO ACCOMPLISH THE WORK DESCRIBED.
- THE CONTRACTOR SHALL SUPPLY ALL MISCELLANEOUS BLOCKING, BRACING, METAL, TRIM, FASTENERS, HARDWARE, ETC., AS REQUIRED TO COMPLETE THE WORK HEREIN.
- INSTALLATION OF ALL PRODUCTS SHALL BE AS REQUIRED BY THE MANUFACTURER'S LATEST WRITTEN INSTRUCTIONS AT THE TIME OF PERMITTING.
- HOLDS AND OPENINGS THROUGH WALLS AND FLOORS FOR DUCTS, PIPING, AND VENTILATION SHALL BE CHECKED BY THE CONTRACTOR, WHO SHALL VERIFY SIZES AND LOCATIONS OF SUCH HOLES OR OPENINGS WITH PLUMBING, HEATING, VENTILATING, AND ELECTRICAL DRAWINGS AND CONTRACTOR'S FIELD MEASUREMENTS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING FLOORING ASSEMBLY SHALL HAVE ANNUAL SPACE PRESTRESSING. THE CONTRACTOR SHALL PROVIDE MANUFACTURER TESTED SYSTEMS AND DETAILS OR AN ENGINEERED JUDGEMENT FOR EACH TYPE OF PENETRATION REQUIRED TO COMPLETE THE WORK.
- VERIFICATION: THE CONTRACTOR SHALL VERIFY DIMENSIONS AND CONDITIONS AT THE JOB SITE BEFORE COMMENCING WORK. THIS SHALL INCLUDE FIELD MEASUREMENTS SO THAT STRUCTURAL CONDITIONS CAN BE VERIFIED AND ITEMS CAN BE ACCURATELY FABRICATED.
- OMISSIONS: IF CERTAIN FEATURES ARE NOT FULLY SHOWN OR CALLED OUT ON THE DRAWINGS OR NOTES, THEIR CONSTRUCTION SHALL BE OF THE SAME CHARACTER AS FOR SIMILAR CONDITIONS THAT ARE SHOWN OR CALLED OUT.
- DISCREPANCIES/CONFLICTS: IF THERE IS A DISCREPANCY IN THE DRAWINGS OR IF WORK CALLED OUT TO BE PERFORMED CONFLICTS WITH EXISTING FIELD CONDITIONS, THE CONTRACTOR SHALL FIRST CONSULT WITH THE ARCHITECT'S ATTENTION FOR RESOLUTION BEFORE BEGINNING THAT PORTION OF THE WORK.
- CONTROLS AND OPERATING MECHANISMS FOR ALL FIXTURES AND FURNISHINGS SHALL BE GRASPING, PUNCHING OR TRIMMING OF THE WIREST TO ACTIVATE CONTROLS.
- ALL REQUIRED ACCESSIBLE ELEVATORS SHALL BE IDENTIFIED BY THE INTERNATIONAL SYMBOL OF ACCESSIBILITY. SIGNAGE SHALL BE INSTALLED IN ACCORDANCE WITH ICC SECTIONS 1011, 1109 AND 1110, ON THE WALL ADJACENT TO THE LATCH SIDE OF THE DOOR OR NEAREST ADJACENT WALL, INCLUDING BUT NOT LIMITED TO:
  - SIGNAGE FOR REQUIRED ACCESSIBLE ELEMENTS IDENTIFIED BY THE INTERNATIONAL SYMBOL OF ACCESSIBILITY, INCLUDING BUT NOT LIMITED TO EXIT SIGNS AND ACCESSIBLE TOILET FACILITIES.
  - ANY REQUIRED SITE-SPECIFIC SIGNS AS REQUIRED FOR PARKING AND ACCESSIBLE ROUTES.

#### PROJECT TEAM

**OWNER**  
JAMES CITY COUNTY  
OFFICE OF ECONOMIC DEVELOPMENT  
101-0 MOUNTS BAY DRIVE  
WILLIAMSBURG, VA 23186

**GENERAL CONTRACTOR**  
DAVID A. NICE BUILDERS, INC.  
4571 WARE CREEK ROAD  
WILLIAMSBURG, VA 23186

**ARCHITECT**  
GUERNSEY TINGLE  
1757 220 0220  
SUITE 101  
WILLIAMSBURG, VA 23186

**AS BUILT**

The approval of these plans does not constitute a warranty by the contractor from compliance with all applicable provisions of the Virginia Uniform Statewide Building Code.

**Guernsey Tingle**  
1757-220-0220  
williamsburg, VA

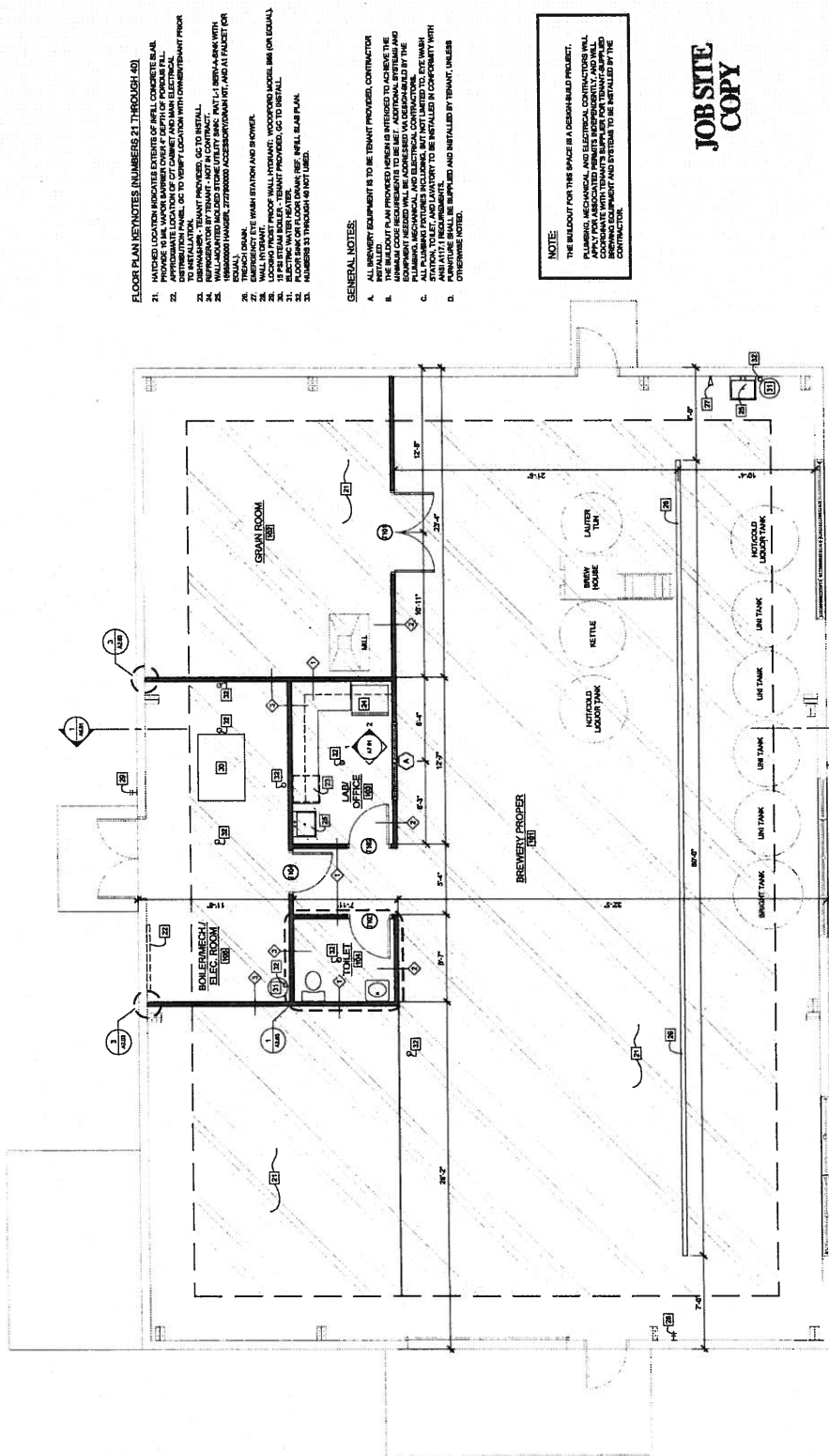
**BILLSBURG BREWERY**  
Tenant Improvements to  
JCC Marina Warehouse Building  
A17 0363  
James City County Marina  
2054 Jericho Road, Williamsburg, Virginia 23185

REVISION	DATE	DESCRIPTION
1	03/24/17	ISSUED FOR PERMIT

**PERMIT SET**  
JAMES CITY COUNTY  
1757-220-0220  
03-07-17  
RECEIVED

**T1.01**  
DATE: 03/24/17  
DRAWN: KCB  
CHECKED: KCB  
INCHES: 24" X 36"





**JOB SITE  
COPY**

**NOTE:** THE BUILDOUT FOR THIS SPACE IS A DESIGN-BUILD PROJECT. PLUMBING, MECHANICAL, AND ELECTRICAL CONTRACTORS WILL APPLY FOR ASSOCIATED PERMITS INDEPENDENTLY, AND WILL COORDINATE WITH TENANT'S SUPPLIER FOR TENANT-SUPPLIED FURNITURE. FIREWORKS EQUIPMENT AND SYSTEMS TO BE INSTALLED BY THE FIREWORK CONTRACTOR.

FLOOR PLAN KEYNOTES (NUMBERS 21 THROUGH 40)	
21	HATCHED LOCATION INDICATES EXTENT OF INFL. CONCRETE SLAB.
22	LOCATING INFORMATION FOR ALL INFL. CONCRETE SHALL BE APPROPRIATE LOCATION OF UT CABLE AND HALL ELECTRICAL DISTRIBUTION PANEL. GO TO VERIFY LOCATION WITH ORIENTED/PAVED FLOOR PLAN.
23	DETERMINATION, TRAVEL POINTS, GO TO INSTALL REPRESENTATION BY TRAVEL - NOT IN CONTRACT.
24	DETERMINATION, TRAVEL POINTS, GO TO INSTALL REPRESENTATION BY TRAVEL - NOT IN CONTRACT.
25	DETERMINATION, TRAVEL POINTS, GO TO INSTALL REPRESENTATION BY TRAVEL - NOT IN CONTRACT.
26	DETERMINATION, TRAVEL POINTS, GO TO INSTALL REPRESENTATION BY TRAVEL - NOT IN CONTRACT.
27	DETERMINATION, TRAVEL POINTS, GO TO INSTALL REPRESENTATION BY TRAVEL - NOT IN CONTRACT.
28	DETERMINATION, TRAVEL POINTS, GO TO INSTALL REPRESENTATION BY TRAVEL - NOT IN CONTRACT.
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31	DETERMINATION, TRAVEL POINTS, GO TO INSTALL REPRESENTATION BY TRAVEL - NOT IN CONTRACT.
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38	DETERMINATION, TRAVEL POINTS, GO TO INSTALL REPRESENTATION BY TRAVEL - NOT IN CONTRACT.
39	DETERMINATION, TRAVEL POINTS, GO TO INSTALL REPRESENTATION BY TRAVEL - NOT IN CONTRACT.
40	DETERMINATION, TRAVEL POINTS, GO TO INSTALL REPRESENTATION BY TRAVEL - NOT IN CONTRACT.

**GENERAL NOTES:**

- ALL BATTERY EQUIPMENT IS TO BE TENANT PROVIDED, CONTRACTOR TO INSTALL.
- THE BUILDOUT PLAN PROVIDED HEREIN IS INTENDED TO ACHIEVE THE MINIMUM CODE REQUIREMENTS TO BE MET. ADDITIONAL SYSTEMS AND EQUIPMENT NEEDED WILL BE ADDRESSED VIA DESIGN-BUILD BY THE PLUMBING, MECHANICAL, AND ELECTRICAL CONTRACTORS.
- ALL PLUMBING FITTINGS INCLUDING, BUT NOT LIMITED TO, CUP WASH STATION, TOILET, AND LAVATORY TO BE INSTALLED IN CONJUNCTION WITH ANSI A117.1 REQUIREMENTS.
- FURNITURE SHALL BE SUPPLIED AND INSTALLED BY TENANT, UNLESS OTHERWISE NOTED.

[illegible]

**FINISH NOTES:**

1. ALL INTERIOR METAL DOORS AND FRAMES TO BE FINISHED WITH ONE COAT PRIMER AND TWO COATS SATIN ENAMEL, COLOR AS SELECTED BY TARRANT.

2. INTERIOR PERFOROUS METAL SURFACES SHALL BE FINISHED WITH 1 COAT FERROUS METAL PRIMER (EXCEPT SHOP PRIMED) AND ONE COAT INTERIOR ENAMEL, COLOR AS SELECTED BY TARRANT.

3. THE CONTRACTOR SHALL OBTAIN THE SYSTEM MANUFACTURER'S RECOMMENDATIONS FOR ADDITIONAL ATTACHMENT/BRACING REQUIREMENTS FOR THE SYSTEM. THE SYSTEM SHALL BE SUPPLIED WITH ALL REQUIRED BRACING AND ANCHORAGE. THE SYSTEM SHALL BE CONNECTED, BE SPACED, BE RIGID, BE PROTECTED AND BE PROTECTED TO STRUCTURE ABOVE.

REVISION SCHEDULE

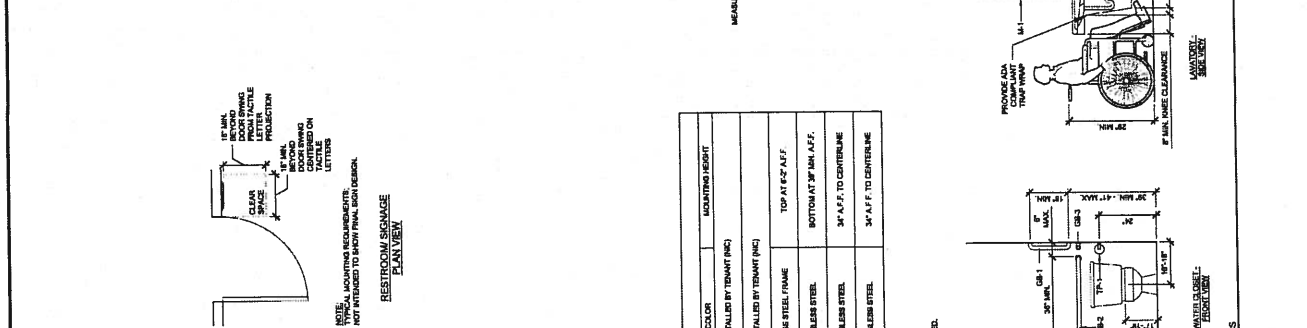
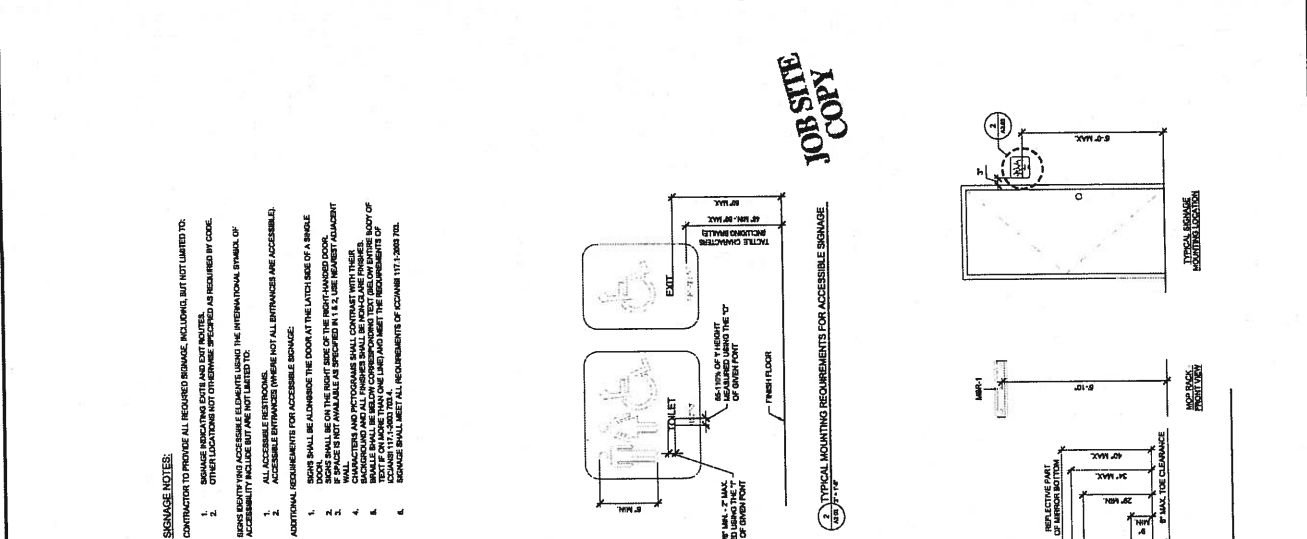
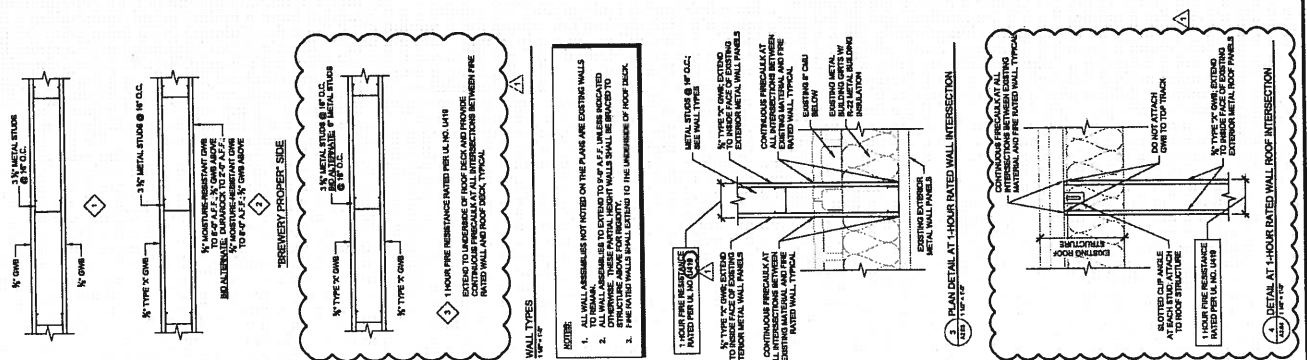
NO.	DATE	DESCRIPTION
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2	03-07-17	ISSUED FOR PERMIT
3	03-07-17	ISSUED FOR PERMIT
4	03-07-17	ISSUED FOR PERMIT
5	03-07-17	ISSUED FOR PERMIT
6	03-07-17	ISSUED FOR PERMIT
7	03-07-17	ISSUED FOR PERMIT
8	03-07-17	ISSUED FOR PERMIT
9	03-07-17	ISSUED FOR PERMIT
10	03-07-17	ISSUED FOR PERMIT

**WALL TYPES AND ADA DIAGRAMS**

**PERMIT SET**

03-07-17  
Drawn: KCS/CS/CS  
Project: 210150

**A2.03**

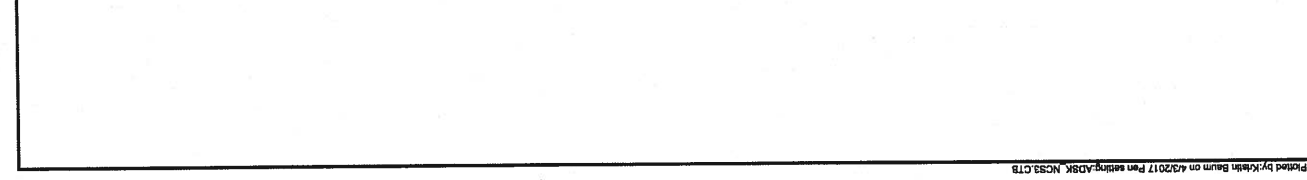


**BATHROOM ACCESSORIES**

MARK	ITEM	MANUFACTURER	FINISH	COLOR	MOUNTING HEIGHT
PTD-1	PAPER TOWEL DISPENSER TO BE PROVIDED/INSTALLED BY TENANT (PAC)				
TP-1	TOILET PAPER DISPENSER TO BE PROVIDED/INSTALLED BY TENANT (PAC)				
SA-1	SHOWER	ASB	304 L 304		TOP AT 8'2" A.F.F.
GB-1	1/4" LONG VERTICAL GRAB BAR	ASB	304 L 304		BOTTOM AT 3'8" A.F.F.
GB-2	3/4" LONG GRAB BAR	ASB	304 L 304		3/4" A.F.F. TO CENTERLINE
GB-3	4" LONG GRAB BAR	ASB	304 L 304		3/4" A.F.F. TO CENTERLINE

**NOTES:**

- CONFIRM THE FINISH WITH THE PLACEMENT OF INTERNAL WALL REINFORCEMENT.
- CONFIRM ALL LOCATIONS ACCESSORIES.
- STAINLESS STEEL FINISH TO BE NO. 4 SATIN BRUSHED FINISH UNLESS OTHERWISE NOTED.



COMMONWEALTH OF VIRGINIA  
Kristen Dyer  
KRISTIN C. DYER  
Lic. No. 81877  
02 09 17

Date:	03-07-17
Origin:	KCB Checklist: KCB
Project:	216136

## A5.01

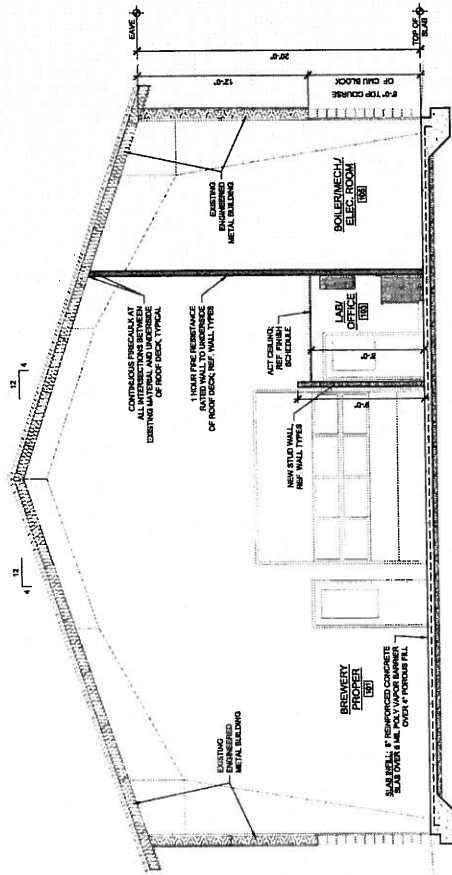
PERMIT  
SET

## BUILDING SECTION

[illegible]

**BILLSBURG BREWERY**  
Tenant Improvements to  
JCC Marina Warehouse Building  
James City County Marina  
2054 Jamestown Road, Williamsburg, Virginia 23185

**GuerseyTingle**  
757-220-0220 Williamsburg, VA  
guerseytingle.com



### 1 BUILDING SECTION (FOOTING AT GIRTS)

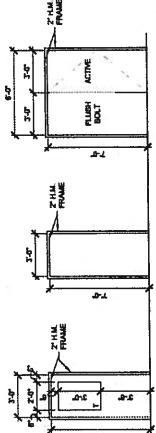
**JOB SITE  
COPY**

## NOTES:

1. ALL CONSTRUCTION NOT NOTED IS EXISTING TO REMAIN.
2. ALL WALL ASSEMBLIES TO EXTEND TO 8" A.F.F. UNLESS INDICATED OTHERWISE. THESE PARTIAL HEIGHT WALLS SHALL BE BRACED TO STRUCTURE ABOVE FOR RIGIDITY.
3. SINGE BRACED WALL SHALL EXTEND TO THE UNDERSIDE OF ROOF DECK.

- [illegible]

MARK	DOOR			FRAME MATERIAL	FINISH	HARD SET	REMARKS
	WIDTH	HEIGHT	TYPE				
T101	6'-0"	7'-0"	C	SLA	NA	NA-01	(1) 5-0 DOORS (1) LEAF ACTIVE (1) LEAF PLUMB R/OAT
T102	6'-0"	7'-0"	C	SLA	NA	NA-02	PROVIDE TAMPERS GLAZED LITE AS SHOWN
T103	6'-0"	7'-0"	C	SLA	20 MM	NA	
T104	6'-0"	7'-0"	B	SLA	SLA	HR-04	
T105	2'-0"	7'-0"	B	SLA	SLA	HR-04	

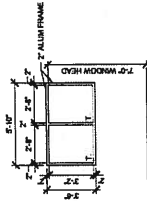


TYPE C

TYP

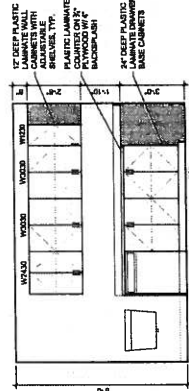
### DOOR TYPES

WINDOW SCHEDULE						
MARK	SIZE		TYPE	FRAME		REMARKS
	WIDTH	HEIGHT		MATERIAL	FINISH	
A	5' 0"	7' 6"	FIXED ALUMINUM	ALUMINUM STOREFRONT	PRE-FINISHED	TUFTED GLAZING

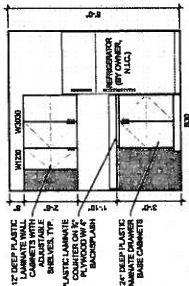


TYPE A  
(TEMPERED PANES  
WHERE INDICATED)

## WINDOW TYPES



1 ELEVATION



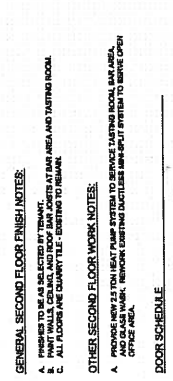
**LAB/OFFICE**













**DECK FRAMING PLAN**

## STRUCTURAL SPECIFICATIONS

**ERECTION PROCEDURES, SEQUENCE, AND SAFETY:**

[illegible]

**INSPECTION:**

**INSPECTION:**

1. SPECIAL INSPECTIONS MAY BE REQUIRED FOR THE PROJECT IN CONFORMANCE WITH THE VIRGINIA UNIFORM STATEWIDE BUILDING CODE (MUBIC) AND 2012 VIRGINIA CONSTRUCTION CODE.
2. IF REQUIRED, THE OWNER SHALL EMPLOY ONE OR MORE SPECIAL INSPECTIONS TO PROVIDE INSPECTIONS DURING CONSTRUCTION OF THE PROJECT. THE SPECIAL INSPECTIONS SHALL BE PERFORMED BY A LICENSED PROFESSIONAL ENGINEER OR ARCHITECT. THE SPECIAL INSPECTIONS SHALL BE PERFORMED IN ACCORDANCE WITH THE VIRGINIA UNIFORM STATEWIDE BUILDING CODE (MUBIC) AND 2012 VIRGINIA CONSTRUCTION CODE.

3. SPECIAL INSPECTION DURING CONSTRUCTION BY LOCAL INSPECTIONS BY LOCAL OFFICIALS.

3. SPECIAL INSPECTION DOES NOT TAKE THE PLACE OF NORMAL INSPECTIONS BY LOCAL CODE OFFICIALS AND IS STILL REQUIRED.
4. THE STRUCTURAL ENGINEER OF RECORD MAY VISIT THE SPECIAL INSPECTIONS, NOR DO THEY IMPLY ACCEPTANCE OF THE WORK OR DOCUMENTS. THESE VISITS DO NOT SUBSTITUTE FOR BITE INSPECTIONS IN ANY WAY FROM OBLIGATIONS AND RESPONSIBILITIES UNDER THE CONTRACT.

**FOUNDATIONS**

**FOUNDATIONS:**

1. BOTTOM OF ALL EXTERIOR FOOTINGS SHALL BE A MINIMUM OF 2'-0" BELOW FINISHED GRADE.

2. EARTH FORMED FOOTINGS SHALL CONFORM TO THE SHAPE, LINE, AND DIMENSIONS SHOWN ON THE FOUNDATION PLAN. ALL WATER

3. SHALL BE REMOVED PRIOR TO PLACING CONCRETE.

4. ITENS SHALL BE REPOSITIVELY LOCATED, ACCURATELY POSITIONED, AND MAINTAINED

3. BEFORE PLACING CONCRETE, SECURELY IN PLACE.

**CONCRETE:**

1. ALL CONCRETE WORK SHALL PERFORM TO ALL THE PROVISIONS OF THE "SPECIFICATIONS FOR STRUCTURAL CONCRETE FOR BUILDINGS" (ACI 308-83) AND TO THE "BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE" (ACI 318-89).

1. ALL CONCRETE WORK SHALL BE IN ACCORDANCE WITH THE "CONCRETE BUILDINGS," (ACI 301-RB-85).
2. ALL CONCRETE SHALL BE PLACED IN ONE LIFT.

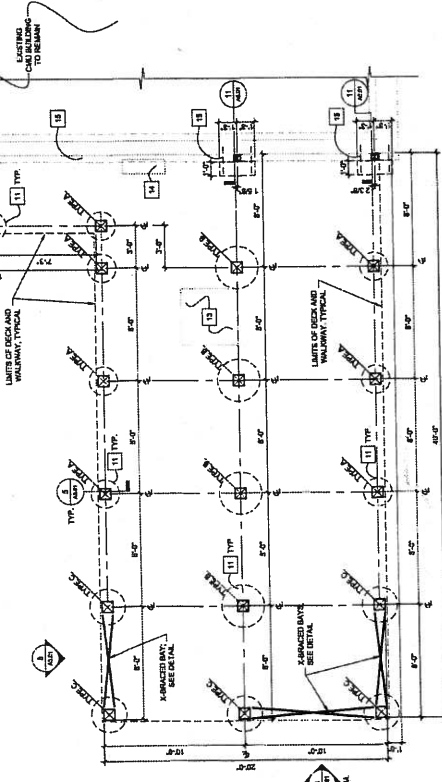
1. ALL CONCRETE SHALL HAVE A MINIMUM AIR-CONTENT OF 6% ± .1%.
2. ALL JOINTS SHALL BE 4".
3. NO AGGREGATE CONTAINING CALCIUM CHLORIDE SHALL BE PERMITTED.
4. THE CONTRACTOR SHALL COMPLY WITH ALL THE PROVISIONS OF "RECOMMENDED PRACTICE FOR HOT WEATHER CONCRETING" (ACI 308-R98), AND "RECOMMENDED PRACTICE FOR COLD WEATHER CONCRETING" (ACI 308-R98).

SOS-RED), AND RECOMMENDATIONS FOR THE FUTURE.

---

FOOTING SCHEDULE			
MARK	DIAMETER	DEPTH	COMMENTS
A	2'-0"	2'-0"	TYPICAL PIER
B	3'-0"	2'-0"	HIGH LOAD PIER
C	2	3'-0"	BRACED BAY PIER

DEPTH AND/OR DIAMETER INDICATES MINIMUM DEPTH BELOW



FOUNDATION PLAN - NEW WORK

**DESIGN LOADS:**

USE/LOCATION	LIVE LOAD
EXTERIOR DECK	100 PSF

**SNOW LOAD**  
GROUND SNOW LOAD  
FLAT ROOF SNOW LOAD  
SNOW EXPOSURE FACTOR  
SNOW LOAD IMPORTANCE FACTOR  
THERMAL FACTOR

$P_g = 20 \text{ PSF}$   
 $P_f = 20 \text{ PSF}$   
 $C_e = 1.0$   
 $I = 1.0$   
 $C_t = 1.0$

WIND LOAD

BASIC WIND SPEED.	100 MPH, EXPOSURE "C"
WIND LOAD IMPORTANCE FACTOR	I = 1.0 DAIKIRISCAKE PROHNE V=45-100 MPH
OCCUPANCY CATEGORY	II
INTERNAL PRESSURE COEFFICIENT	+/- 0.18
EXTERNAL PRESSURE COEFFICIENT	+/- 21 PSF

EARTHQUAKE DESIGN DATA

**EARTHQUAKE DESIGN DATA**

SEISMIC IMPORTANCE FACTOR	IE = 1.0
---------------------------	----------

SITE CLASSES 'D'

SEISMIC DESIGN CATEGORY "B"  
TIMBER FRAME'S DESIGN BASE SHEAR = 4.5K  
SEISMIC RESPONSE COEFFICIENT,  $C_s = 0.064$

RESPONSE MODIFICATION FACTOR,  $R = 1.5$   
EQUIVALENT LATERAL FORCE DESIGN METHOD[illegible]

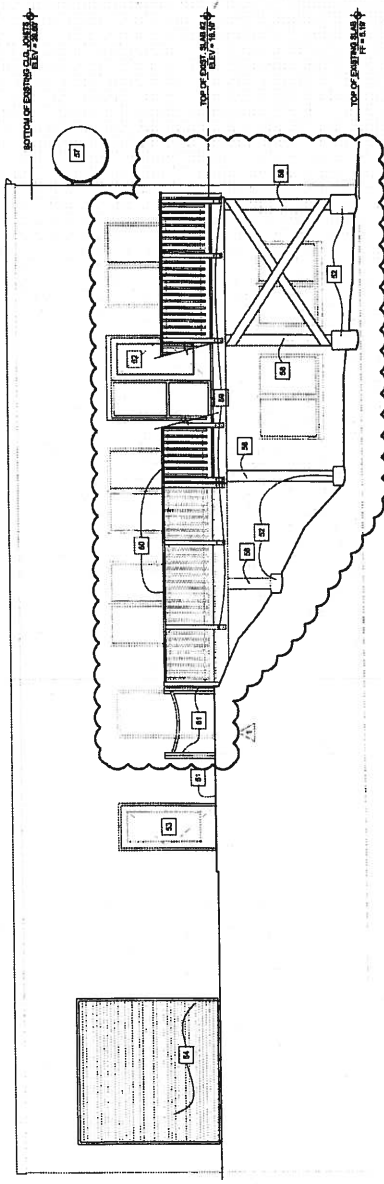
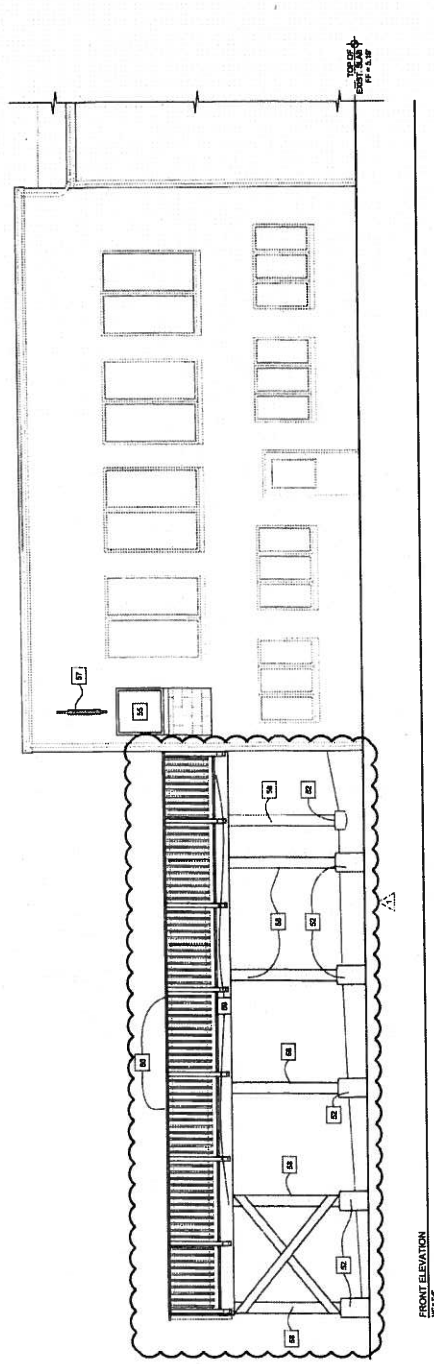
REVISION SCHEDULE		
NO.	DATE	DESCRIPTION
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2	05-08-17	REVISIONS

EXTERIOR ELEVATIONS

PERMIT SET  
05-08-17

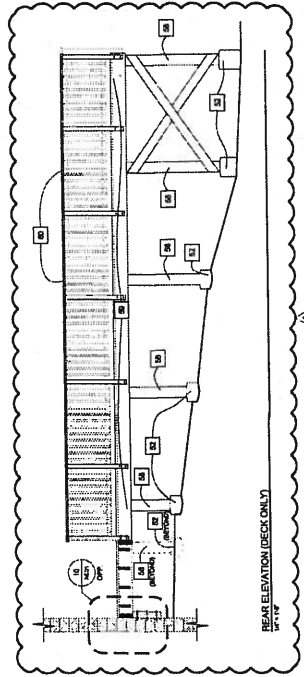


Date: 05-08-17  
Drawn: NCE Checked: NCE  
Project: 218138  
**A4.01**



**JOB SITE COPY**

- ELEVATION KEYNOTES (KEYNOTES 51-60)**
- 51. NEW CONCRETE SLAB ON GRADE. SEE NEW WORK FLOOR PLAN FOR FURTHER INFORMATION.
  - 52. NEW 12\"/>



REVISION SCHEDULE	
NO.	DESCRIPTION
1	ADDITION OF EXISTING DECK
2	DATE 07-25-17
3	DATE 07-25-17

**DETAILS**

**PERMIT SET**  
05-08-17

**DATE** 05-08-17  
**DESIGN** KCBS Structural, KCBS  
**PROJECT** 216136

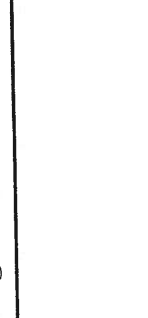
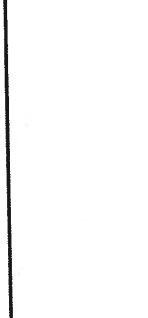
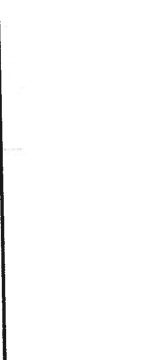
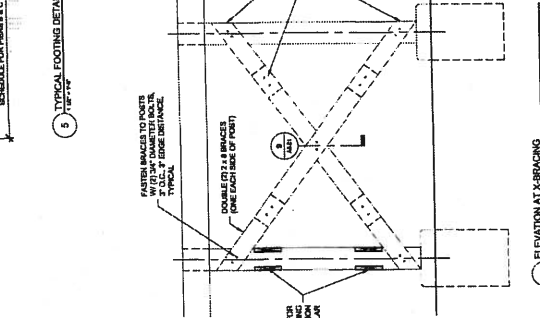
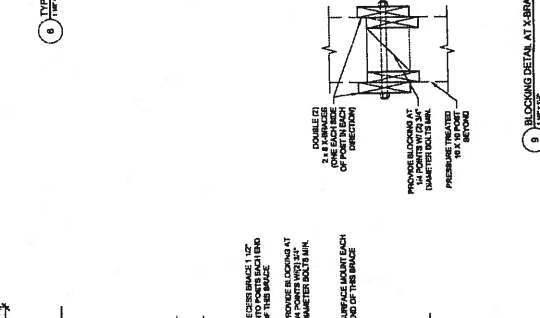
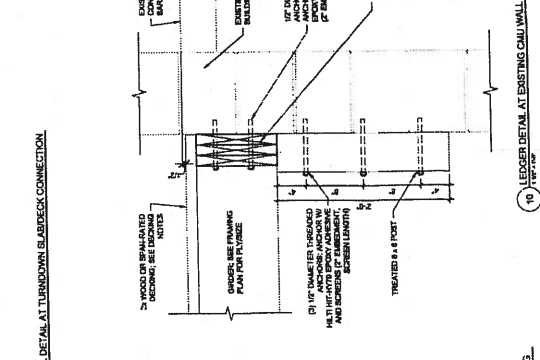
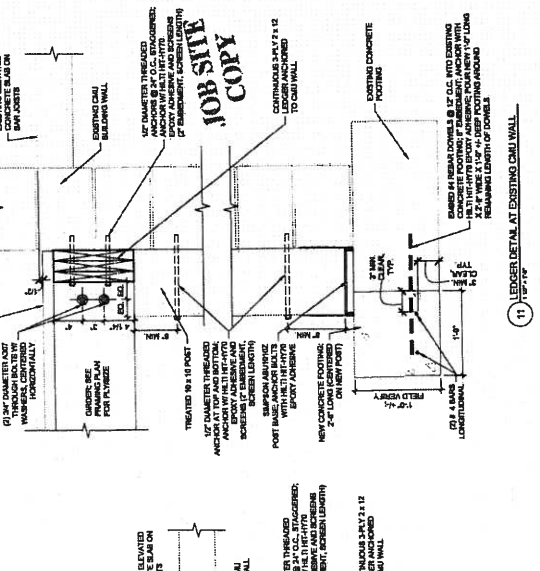
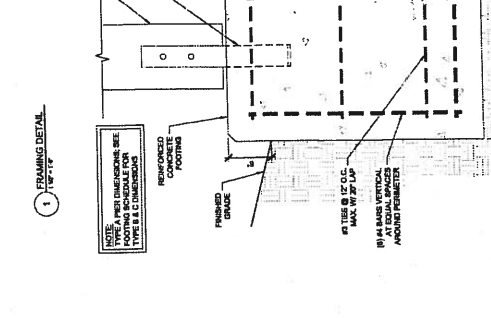
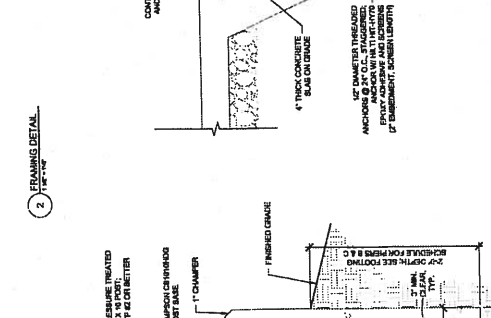
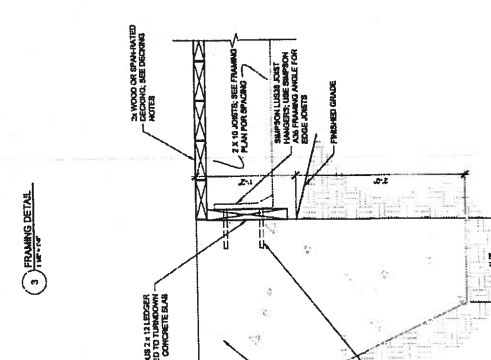
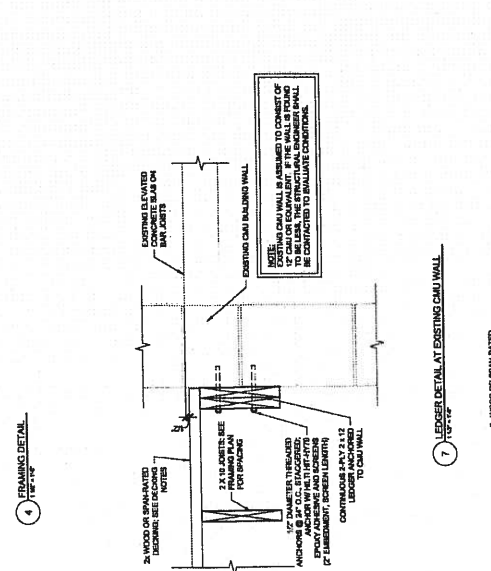
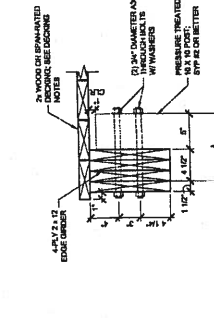
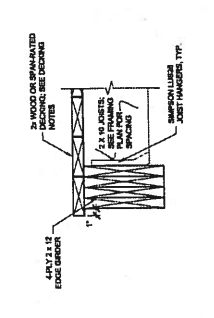
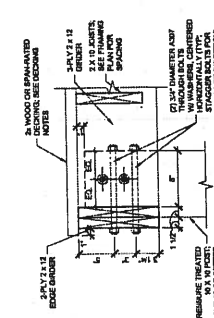
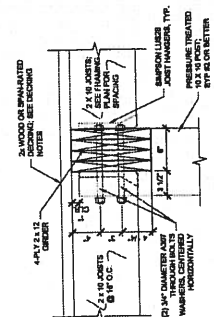
**A5.01**

**TYPICAL BOLTING PATTERNS FOR GIRDES:**

A. 3-ASD 4"x4" MEMBERS @ 12" O.C. WITH 1/2" DIA. ANCHORS @ 12" O.C. (SEE PLAN FOR LAYOUT AND DETAIL OF ANCHORS)




B. 2-PLT 4"x4" MEMBERS @ 12" O.C. WITH 1/2" DIA. ANCHORS @ 12" O.C. (SEE PLAN FOR LAYOUT AND DETAIL OF ANCHORS)

2-PLT 4"x4" MEMBERS SHALL BE BOLTED IN Pairs OF 12" O.C. (SEE PLAN FOR LAYOUT AND DETAIL OF ANCHORS)





**LEGEND**

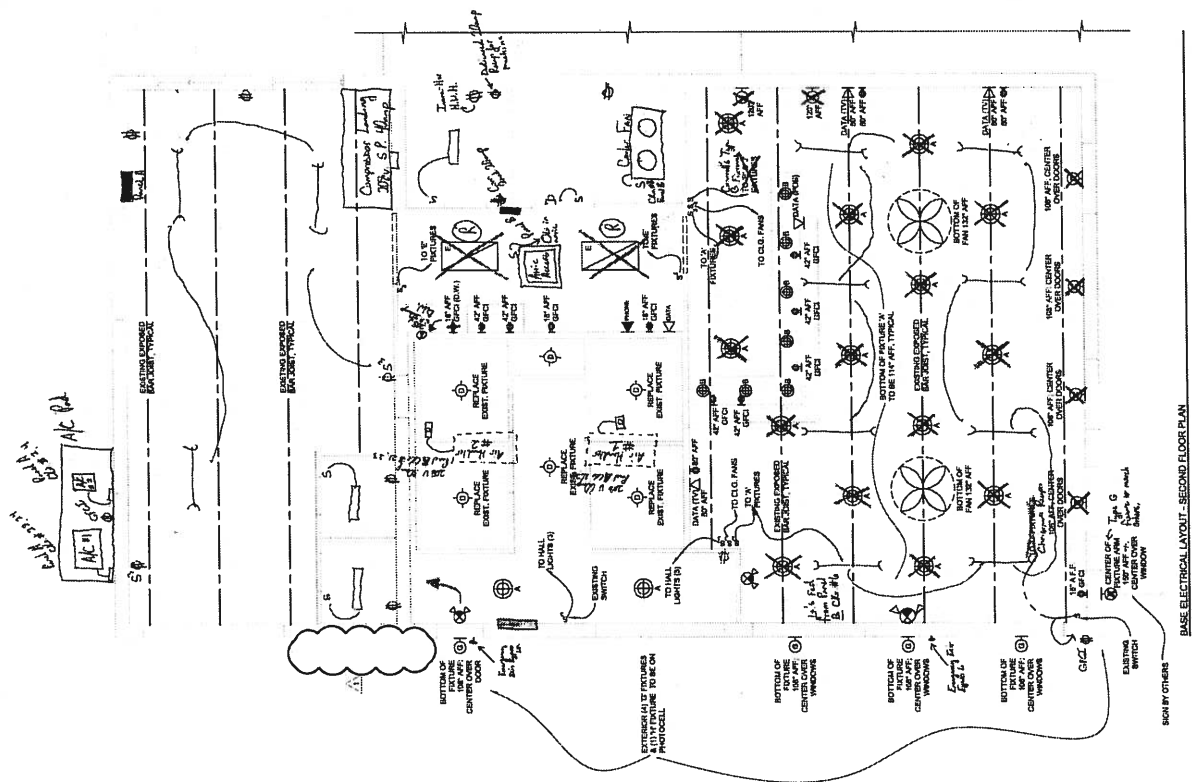
	EXISTING WALLCONSTRUCTION TO REMAIN, TYPICAL
	EXISTING WALLCONSTRUCTION TO BE REMOVED, TYPICAL
	NEW ALTERNATE: EXISTING WALLCONSTRUCTION TO BE

REMOVAL KEYNOTES (KEYNOTES 1-10)

1. REMOVE EXISTING METAL STAIR, RAILS, LANDING, AND SUPPORTING STRUCTURE
2. REMOVE EXISTING TOILET AND PREPARE FOR INSTALLATION OF NEW

[illegible]

7. REMOVE EXISTING DOOR AND FRAME FOR WALL WITH CONCRETE BLOCK NECESSARY TO PREPARE FOR NEW DOOR. NEW DOOR IS TO BE ORDERED TO MATCH EXISTING DOOR. COORDINATE WITH NEW WORK PLANS.
8. REMOVE EXISTING WINDOW, FRAME, AND BLOCK BELOW AS ORDERED TO MATCH EXISTING WINDOW. COORDINATE WITH NEW WORK PLANS.
9. PREPARE OPENING FOR INSTALLATION OF NEW DOOR AND FRAME. COORDINATE WITH NEW WORK PLAN. REMOVE BLOCK BELOW TO REMAIN. EXISTING INAC COMPRESSOR TO REMAIN.
10. EXISTING INAC COMPRESSOR TO REMAIN. CAREFULLY REMOVE EXISTING BUILDING-MOUNTED SIGN AND FRAME. PATCH WALLS AS NEEDED.
- 11.



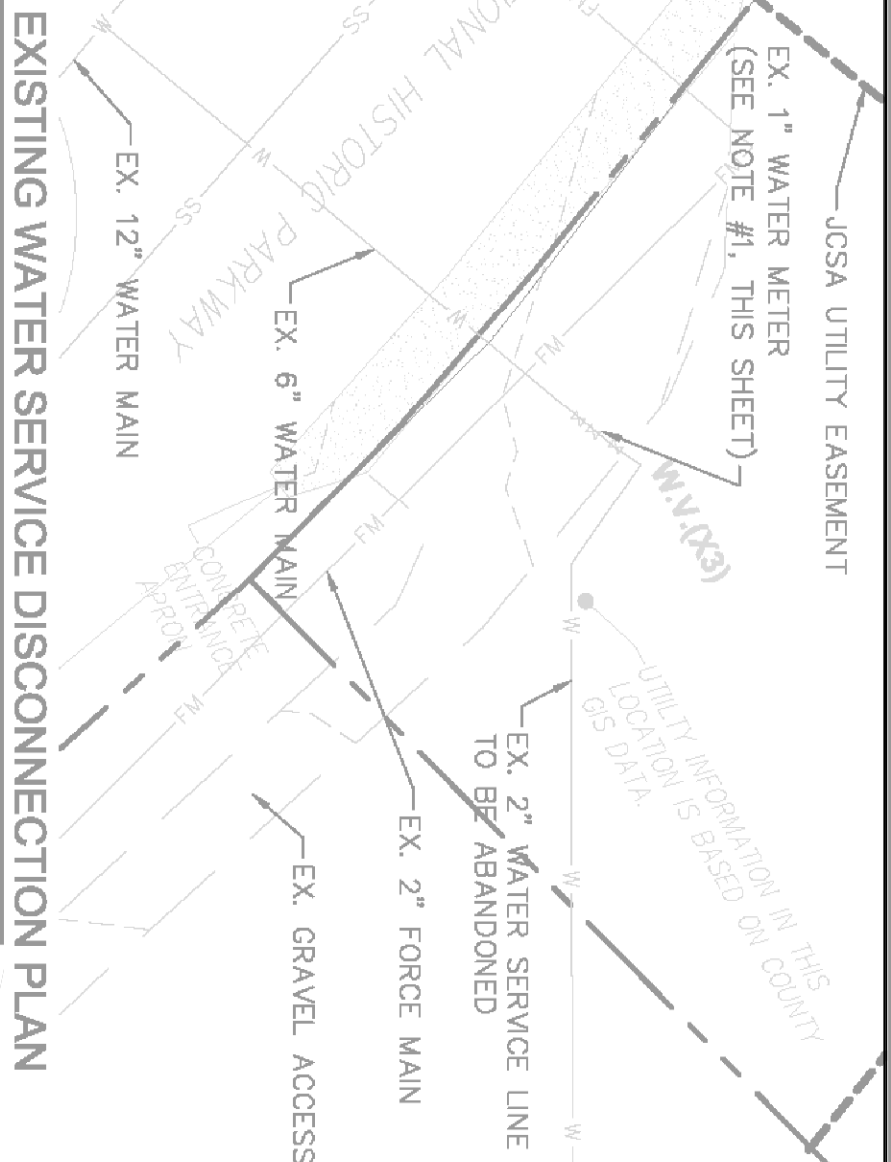
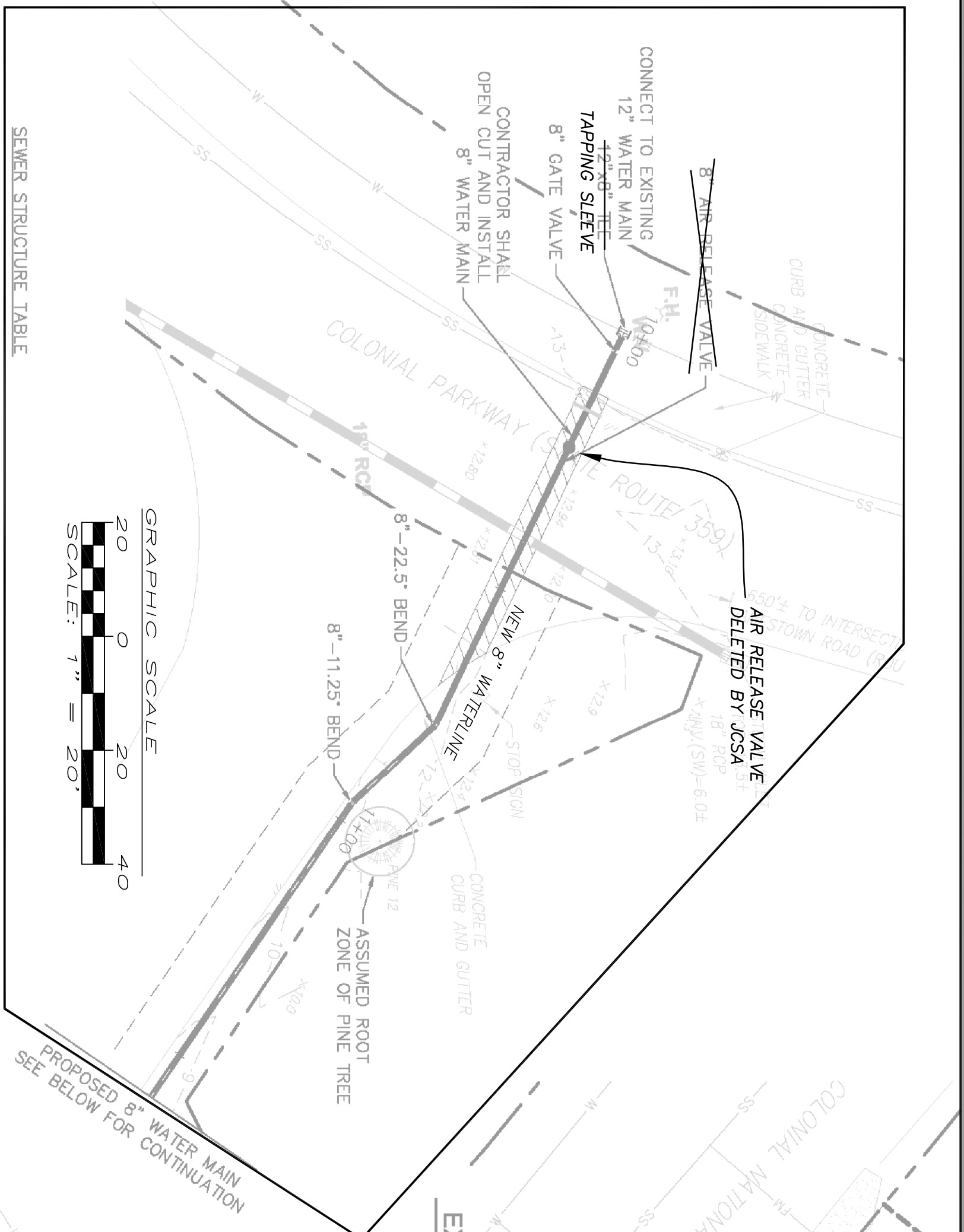
ELECTRIC LEGEND	
GROUND FAULT CURRENT	
INTERCEPT RECEPTACLE	
DUPLEX RECEPTACLE	
SINGLE-POLE SWITCH	
3-POLE SWITCH	
4-POLE SWITCH	
WALL SCENE	
TELEPHONE JACK	
DATA/TELEPHONE JACK	
SURFACE MOUNTED PICTURE	
SWITCH BOX	
PENDANT LIGHT	
SURFACE MOUNTED RECESSED, OR PENDANT PICTURE	
CILING FAN	
COMBINATION OUTLET/RECESSED INDICATED LIMITED FACE, ANCHOR INDICATED RECESSED DIRECTIONAL ANCHOR	
	<i>Detail</i>

FIXTURE SCHEDULE	
MARK	TYPE
A	LARGE LED PENDANT BARN LIGHT
B	SMALL LED PENDANT LIGHT
C	DOORNECK LED DOWNLIGHT
D	LED SURFACE MOUNT
E	2 1/4 CEILING MOUNTED LED
G	EXTENDED VERSION OF C, DARK WATERS
H	EXTENDED VERSION OF D, DARK SKY WATERS
J	DOORNECK LED BARN LIGHT MOUNTED DOWNLIGHTS

**NOTE:**  
THE BLUEPRINT FOR THIS SPACE IS DESIGN-BUILD.  
THIS ELECTRICAL LAYOUT IS PROVIDED AS A GUIDELINE TO THE  
ELECTRICAL CONTRACTOR FOR SUGGESTED RECEPTACLE AND  
SWITCH LOCATIONS.  
ELECTRICAL CONTRACTOR WILL APPLY FOR PERMIT SEPARATELY  
AND WILL COORDINATE WITH TENANT'S SUPPLIER FOR RECHARGING  
EQUIPMENT/STATION SUPPLIED BY THE TENANT AND INSTALLED  
BY THE CONTRACTOR.

# AS BUILT

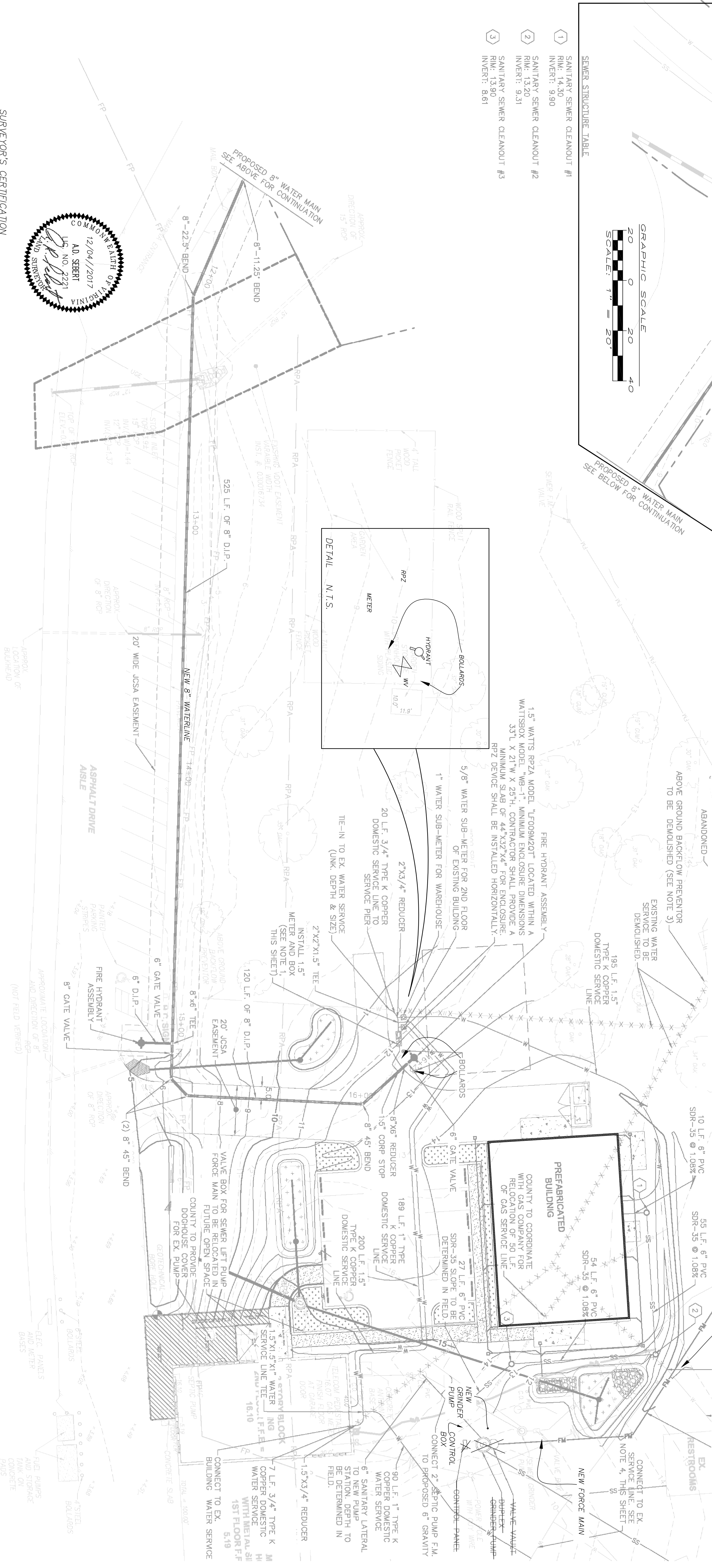
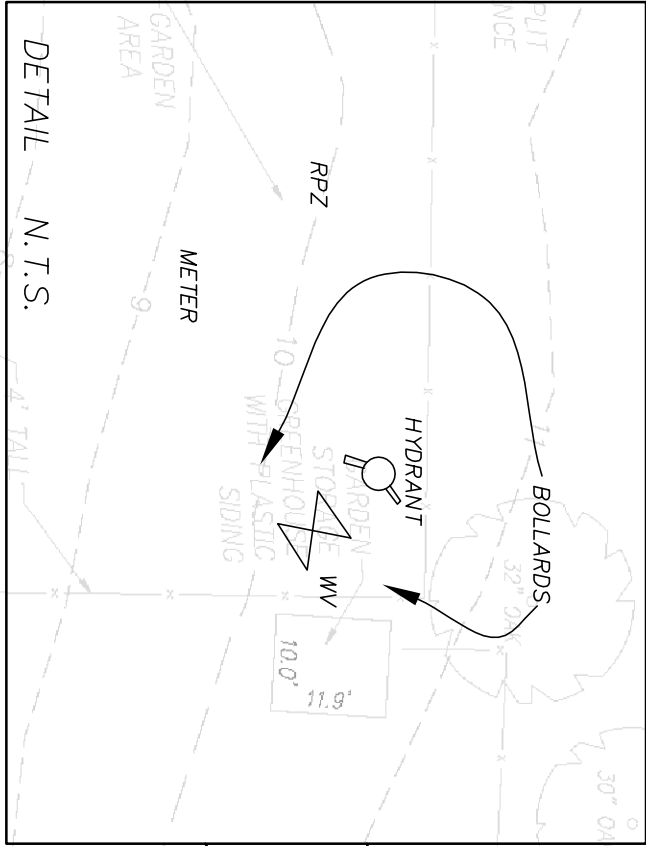




HORIZONTAL LOCATION OF FORCE MAIN LINE IS PER INFORMATION PROVIDED BY THE CONTRACTOR. ACTUAL PIPE WAS NOT PHYSICALLY LOCATED BY THIS SURVEY

- NOTES
- 1.) THE EXISTING WATER METER SHALL BE REMOVED AND SERVICE DISCONNECTED FROM THE 6" WATER MAIN. WATER SERVICE LINE SHALL BE DISCONNECTED FROM THE 6" WATER MAIN. A FULL CIRCLE STAINLESS STEEL REPAIR BAND ON THE EXISTING WATER MAIN. A JCSA INSPECTOR IS TO INSPECT. THE CONTRACTOR SHALL SCHEDULE THIS WORK WITH JCSA 72 HOURS BEFORE WORK IS TO BE DONE.
  - 2.) THE EXISTING 1" WATER METER SHALL BE REUSED IN THE NEW SERVICE CONNECTION ALONG THE NEW ON-SITE 6" WATER MAIN.
  - 3.) THE EXISTING BACK FLOW PREVENTION SHALL BE REMOVED INCLUDING WATER LINES TO 3' BELOW GRADE.
  - 4.) THE EXACT SIZE OF THE EXISTING WATER SERVICE LINES ARE UNKNOWN. CONTRACTOR SHALL VERIFY SIZE BASED ON ACTUAL FIELD CONDITIONS.
  5. APPROVED BACKFLOW PREVENTION ASSEMBLIES (GRAYS) ARE THOSE WHICH MEET AWWA STANDARDS, AND ARE APPROVED BY ASSE AND THE USC-FGCOCHR (UNIVERSITY OF SOUTHERN CALIFORNIA FOUNDATION FOR CROSS CONNECTION CONTROL AND HYDRAULIC RESEARCH). THE PRAS SHALL BE INSTALLED IN THE ORIENTATION IT WAS APPROVED FOR BY USC-FGCOCHR. BACKFLOWS MUST NOT BE
  - 6.) THE OWNER SHALL COORDINATE AN INSPECTION OF THE BACKFLOW PREVENTION DEVICE WITH THOMAS FAUBER, JCSA UTILITY SPECIAL COORDINATOR, AT (757) 259-4138. THE BACKFLOW PREVENTER SHALL BE TESTED, MAINTAINED, AND OPERATED IN ACCORDANCE WITH JCSA STANDARDS.
  - 7.) THE PROPOSED UTILITY PLAN DESIGN ASSUMES THE PROPOSED DUPLEX GRINDER PUMP STATION WILL BE CONSTRUCTED AND BROUGHT ON-LINE CONCURRENTLY WITH THE CONSTRUCTION OF THE WAREHOUSE FACILITY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR FIELD DETERMINING THE RECONNECTION OF THE EXISTING SANITARY SERVICES INTO THE NEW PROPOSED PUMP STATION.

NOTE: ALL FORCE MAIN SHOWN HEREON AND GRINDER PUMP ASSEMBLY ARE TO BE PRIVATELY MAINTAINED AND ARE NOT THE RESPONSIBILITY OF JCSA



**SURVEYOR'S CERTIFICATION**

I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON REPRESENTS AN ACTUAL FIELD SURVEY, UNLESS NOTED OTHERWISE. THE HORIZONTAL AND VERTICAL LOCATION OF THE IMPROVEMENTS HAVE BEEN COMPLETED IN GENERAL CONFORMANCE WITH THE APPROVED SITE PLAN - UNLESS SHOWN OR NOTED OTHERWISE.

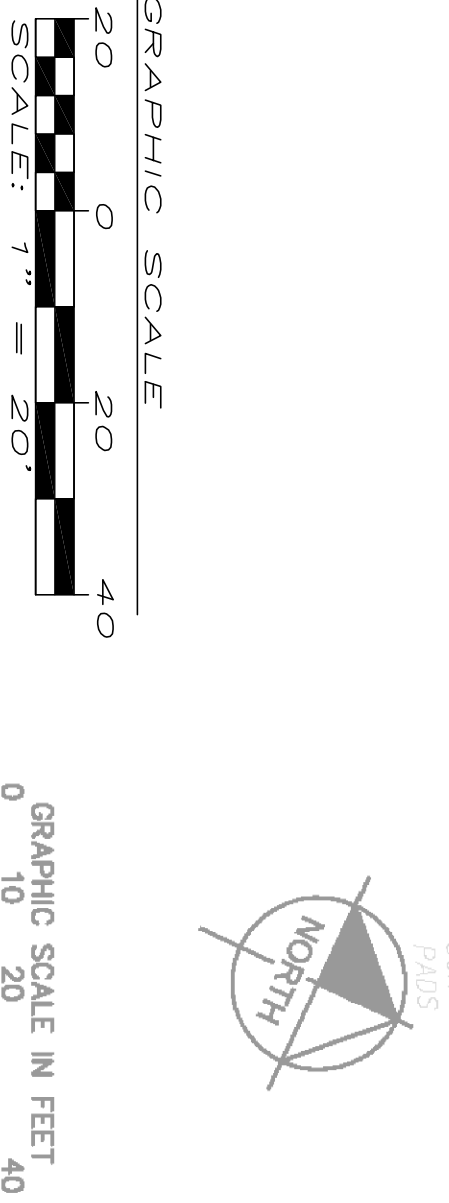
*A.D. Sebert*

A.D. SEBERT, L.S.

12/04/17

DATE

HORIZONTAL AND VERTICAL LOCATION OF WATERLINE IS PER INFORMATION PROVIDED BY THE CONTRACTOR AND A REPRESENTATIVE OF JCSA. ACTUAL PIPE WAS NOT PHYSICALLY LOCATED BY THIS SURVEY



**SEBERT**  
**SURVEYING**  
**LAYOUT, LLC**

173 BARLOW ROAD  
WILLIAMSBURG, VA  
PHONE 345-0931  
sebertsurveying@com.net

LEGEND:

N/P	NOW OR FORMERLY
IRF	IRON PIPE FOUND
IRL	IRON PIPE LINED
BSL	BUILDING SETBACK LINE
SMH	SANITARY MANHOLE
CO	CORNER
WM	WATER METER
X 98.2	EXISTING SPOT ELEVATION
• 98.2	PROPOSED SPOT ELEVATION

SANITARY & WATER AS-BUILT DRAWINGS  
JAMES CITY COUNTY  
MARINA WAREHOUSE  
PREPARED FOR  
DAVID A. NICE BUILDERS, INC

REVISIONS
DESIGNED BY: ADS
SCALE: N/A
DATE: 12/04/2017
PROJECT NO: J464-1
DRAWING NO: 2 OF 3





SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON REPRESENTS AN ACTUAL FIELD SURVEY, UNLESS NOTED OTHERWISE. THE HORIZONTAL AND VERTICAL LOCATION OF THE IMPROVEMENTS HAVE BEEN COMPLETED IN GENERAL CONFORMANCE WITH THE APPROVED SITE PLAN - UNLESS SHOWN OR NOTED OTHERWISE.

A.D. SEBERT, L.S.

07/05/2017  
DATE

PROJECT SUMMARY DATA

PROPERTY DATA	
TAX MAP:	4640100012
ADDRESS:	2054 JAMESTOWN ROAD, WILLIAMSBURG VA 23185
OWNER:	JAMES CITY COUNTY
MAGISTERIAL DISTRICT:	BERKELEY
EXISTING ZONING:	B-1, GENERAL BUSINESS
MINIMUM LOT AREA:	NONE
BUILDING SETBACKS REQUIREMENTS:	
FRONTAGE:	50'
SIDE YARD:	20'
REAR YARD:	20'
BUILDING DATA	
MAX BUILDING HEIGHT:	60'
PROPOSED BUILDING HEIGHT:	30'
BUILDING CONSTRUCTION:	UNSPRINKLERED, TYPE IIB
PROPOSED BUILDING AREA:	3,938 SQ. FT. [1 STORY]
ENVIRONMENTAL DATA	
FLOOD ZONE DESIGNATION:	
THE PROPOSED BUILDING IS LOCATED IN FLOOD ZONE 'X' AS SHOWN ON THE NATIONAL FLOOD INSURANCE PROGRAM, FLOOD INSURANCE RATE MAP NUMBER 51095C0182D PANEL NUMBER 182 OF 237. A PORTION OF THE PROJECT AREA, IS LOCATED WITHIN FLOOD ZONE 'AE', BUT NO PERMANENT STRUCTURES WILL BE CONSTRUCTED WITHIN THIS ZONE.	
POWHATAN CREEK WATERSHED [TIDAL MAINSTEM SUBAREA]	
WATERSHED:	
HYDROLOGIC UNIT CODE (HUC):	
JL31 [POWHATAN CREEK]	
PARKING REQUIREMENTS	
WAREHOUSE BUILDING - CATEGORY = INDUSTRIAL USE, WAREHOUSE [1 SPACE / 2 EMPLOYEES MAX SHIFT]	
WAREHOUSE: 4 EMPLOYEES / 2 = 2 SPACES	
TASTING ROOM (RETROFIT EX. BUILDING)	
TASTING ROOM: 30 SEATS / 4 = 8 SPACES	
PARKING REQUIRED: 10 SPACES	
PARKING PROVIDED: 11 SPACES (INCLUDES 2 HDPC W/ 1 VAN ACCESSIBLE)	
OPEN SPACE DATA	
TOTAL PARCEL AREA:	
37.08 AC	
TOTAL DISTURBED AREA:	
ON-SITE: 0.99 AC. [INCLUDES CONSTRUCTION ACCESS ROUTE & WATER MAIN EXTENSION]	
OFF-SITE: 0.00 AC	
TOTAL: 0.99 AC	
IMPERVIOUS [PROPERTY] (EXISTING):	
5.5% (2.05 AC.)	
IMPERVIOUS [PROPERTY] (PROPOSED):	
6.3% (2.35 AC.)	
TOTAL PROJECT AREA:	
ADDITIONAL IMPERVIOUS WITHIN 100' RPA BUFFER: 1,200 SQ. FT.	
BUILDING COVERAGE	
EXISTING: 1.7%	
PROPOSED: 1.9%	
MAXIMUM (PER CODE): 30%	
FLOOR AREA RATIO	
EXISTING: 1.8%	
PROPOSED: 2.1%	
MAXIMUM (PER CODE): 60%	
PROPOSED PROJECT MEETS BUILDING COVERAGE AND FLOOR AREA RATIO REQUIREMENTS PER COUNTY CODE	
PROPOSED DEVELOPMENT SITE AREA VRRM AREA BREAKDOWN:	
FOREST/OPEN SPACE: 0.04	
MANAGED TURF: 0.40	
IMPERVIOUS AREA: 0.30	

# SITE IMPROVEMENT PLANS

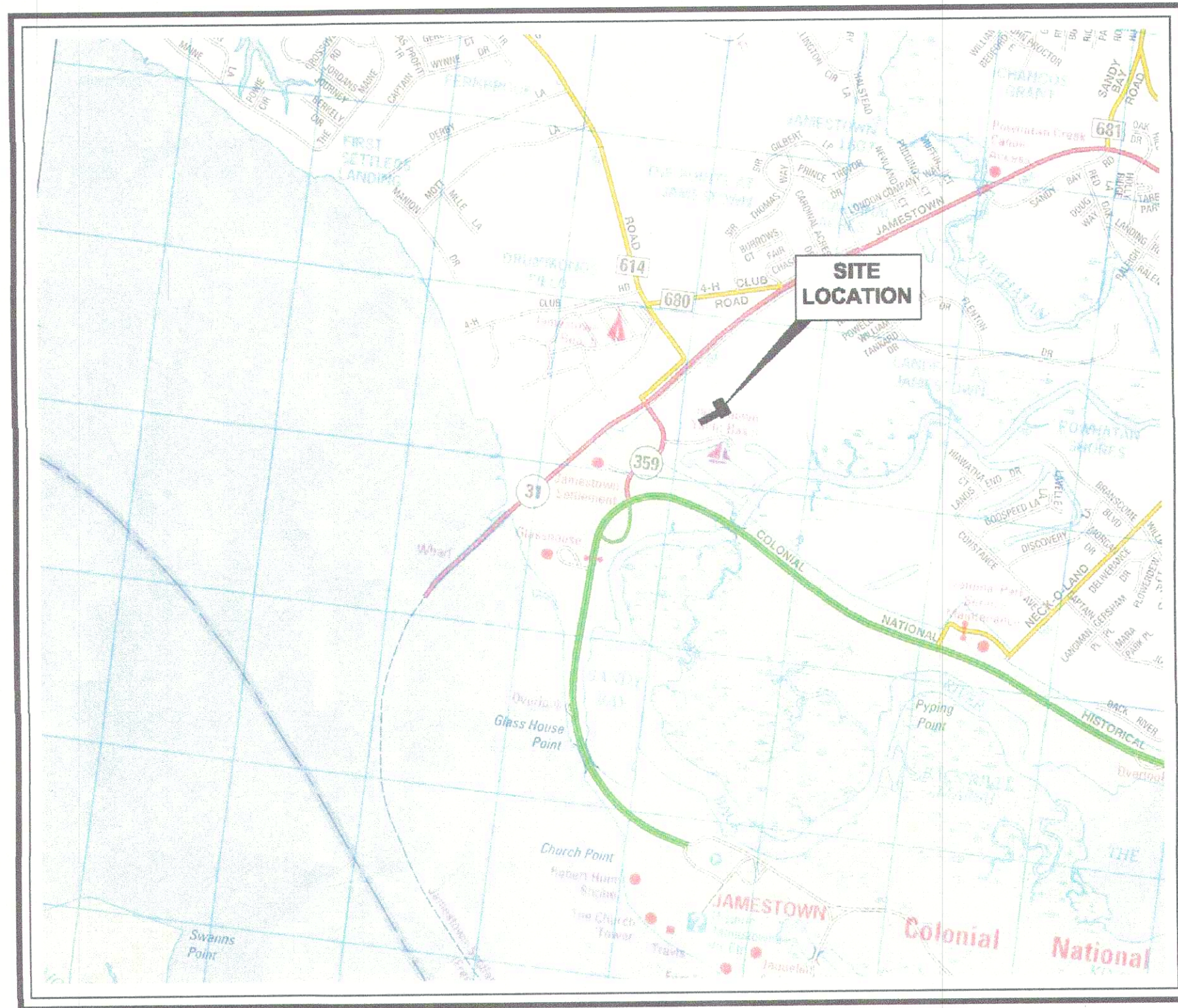
## FOR

# JAMES CITY COUNTY

# MARINA WAREHOUSE

## SEPTEMBER 28, 2016

VICINITY MAP



VICINITY MAP

1"=1,000'

Copyright ADC The Map People  
Permitted Use Number 012314-06

DESIGN BY  
KIMLEY-HORNE ASSOCIATES, INC

AS-BUILT DRAWINGS BY  
SEBERT SURVEYING & LAYOUT, LLC

DATE: 07/05/2017

PLAN STATUS		
DATE	INITIAL	DESCRIPTION
08/25/2016	LWT	1ST COUNTY SUBMITTAL
09/15/2016	LWT	2ND COUNTY SUBMITTAL

SEBERT  
SURVEYING  
&  
LAYOUT, LLC

173 BARLOW ROAD  
WILLIAMSBURG, VA  
PHONE 345-0931  
sebertsurveying@cox.net

PROJECT CONTACT LIST

APPLICANT

JAMES CITY COUNTY ECONOMIC DEVELOPMENT  
101-D MOUNTS BAY RD, P.O. BOX 8784  
WILLIAMSBURG, VA 23187  
CONTACT: KATHRYN SIPES  
TEL: 757-259-4917

CIVIL ENGINEER

KIMLEY-HORN AND ASSOCIATES, INC.  
11815 FOUNTAIN WAY, SUITE 300  
NEWPORT NEWS, VA 23606  
TEL: (757) 213-8600  
FAX: (757) 213-8601  
CONTACT: LUKE TWILLEY, P.E.

SURVEYOR

AES CONSULTING ENGINEERS  
5248 OLDE TOWNE ROAD, SUITE 1  
WILLIAMSBURG, VA 23188  
TEL: 757-253-0040  
CONTACT: STEPHEN LETCHFORD, L.S.

PLANNING

JAMES CITY COUNTY  
PLANNING DIVISION  
101-A MOUNTS BAY RD  
WILLIAMSBURG, VA 23187  
TEL: 757-253-6685

WATER/SEWER

JAMES CITY SERVICE  
AUTHORITY  
119 TEWNING RD  
WILLIAMSBURG, VA 23188

GAS

VIRGINIA NATURAL GAS  
TEL: (866) 229-3578

TELEPHONE

VERIZON  
TEL: (800) 837-4966

ELECTRIC

DOMINION VIRGINIA POWER  
TEL: (866) 366-4357

LEGEND:	
N/F	NOW OR FORMERLY
IRF	IRON ROD FOUND
IPF	IRON PIPE FOUND
IRS	IRON ROD SET
BSL	BUILDING SETBACK LINE
R/W	RIGHT-OF-WAY
SMH	SANITARY MANHOLE
CO	SANITARY CLEANOUT
WM	WATER METER
WV	WATER VALVE
X 98.2	EXISTING SPOT ELEVATION
• 98.2	PROPOSED SPOT ELEVATION

NOTES

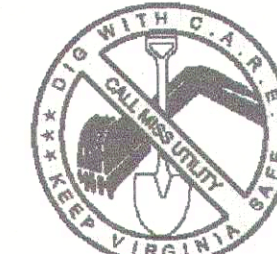
GENERAL NOTES:

- ALL NEW SIGNS SHALL BE IN ACCORDANCE WITH ARTICLE II, DIVISION 3 OF THE JAMES CITY COUNTY ORDINANCE
- THE PROPOSED IMPERVIOUS SQUARE FOOTAGE WITHIN THE RPA IS 1,200 SF. THIS INCREASE WILL BE COMPENSATED ON-SITE BY THE RECLAMATION OF APPROXIMATELY 100 LINEAR FEET OF THE 10 FOOT WIDE GRAVEL ACCESS ROAD AND THE REMOVAL OF TWO 200 SF ON-SITE STORAGE CONTAINER UNITS. THE TOTAL COMPENSATED AREA IS 1,400 SF. THE ACCESS ROAD IS ABANDONED IN PLACE FOR THE FINAL 100 LINEAR FEET TOWARD THE NORTHEAST PROPERTY LINE ADJACENT TO THE VA COMMONWEALTH OF THE JAMESTOWN YORKTOWN FOUNDATION PARCEL.
- ALL OUTDOOR LIGHTING SHALL BE IN ACCORDANCE WITH ARTICLE II, DIVISION 7 OF THE JAMES CITY COUNTY ZONING ORDINANCE.
- BUILDING COVERAGE LIMITS ON THE PROPERTY DO NOT EXCEED 30% OF THE TOTAL LAND AREA. THE FLOOR AREA RATIO DOES NOT EXCEED 60 PERCENT. SEE CALCULATIONS ON THIS SHEET.
- THIS SITE IS LOCATED IN THE POWHATAN CREEK TIDAL MAINSTEM AND IS SUBJECT TO THE SPECIAL STORMWATER CRITERIA (SSC). ONE CREDIT IS REQUIRED. SITE USES BIORETENTION TO OBTAIN THIS CREDIT.
- ALL DEVELOPMENT LOCATED WITHIN THE SFHA SHALL COMPLY WITH THE REQUIREMENTS OF ARTICLE VI, DIVISION 3, FLOODPLAIN AREA REGULATIONS, OF THE JAMES CITY COUNTY ZONING ORDINANCE.

UTILITY NOTES:

- THIS PROJECT SHALL MEET THE REQUIREMENTS OF THE JCSA DESIGN AND ACCEPTANCE CRITERIA FOR WATER AND SEWER SYSTEMS DATED MARCH 2008. THE JCSA CRITERIA FORMALLY ADOPTED THE H.R.P.D.C. REGIONAL CONSTRUCTION STANDARDS, SIXTH EDITION EXCEPT AS MODIFIED BY JCSA. REFER TO SHEET CA-002 FOR JCSA GENERAL NOTES.
- ALL NEW UTILITIES SHALL BE PLACED UNDERGROUND.

MISS UTILITY OF VIRGINIA



CALL BEFORE YOU DIG  
811

RIOR TO CONSTRUCTION, CONTRACTOR SHALL

CALL

"MISS UTILITY"

OF VIRGINIA

DIAL - 811

FOR LOCATION OF UNDERGROUND UTILITIES

RESERVED FOR COUNTY APPROVAL

REVISIONS

DESIGNED BY: ADS

SCALE: N/A

DATE: 07/05/2017

PROJECT NO.

J464-1

DRAWING NO.

1 OF 1

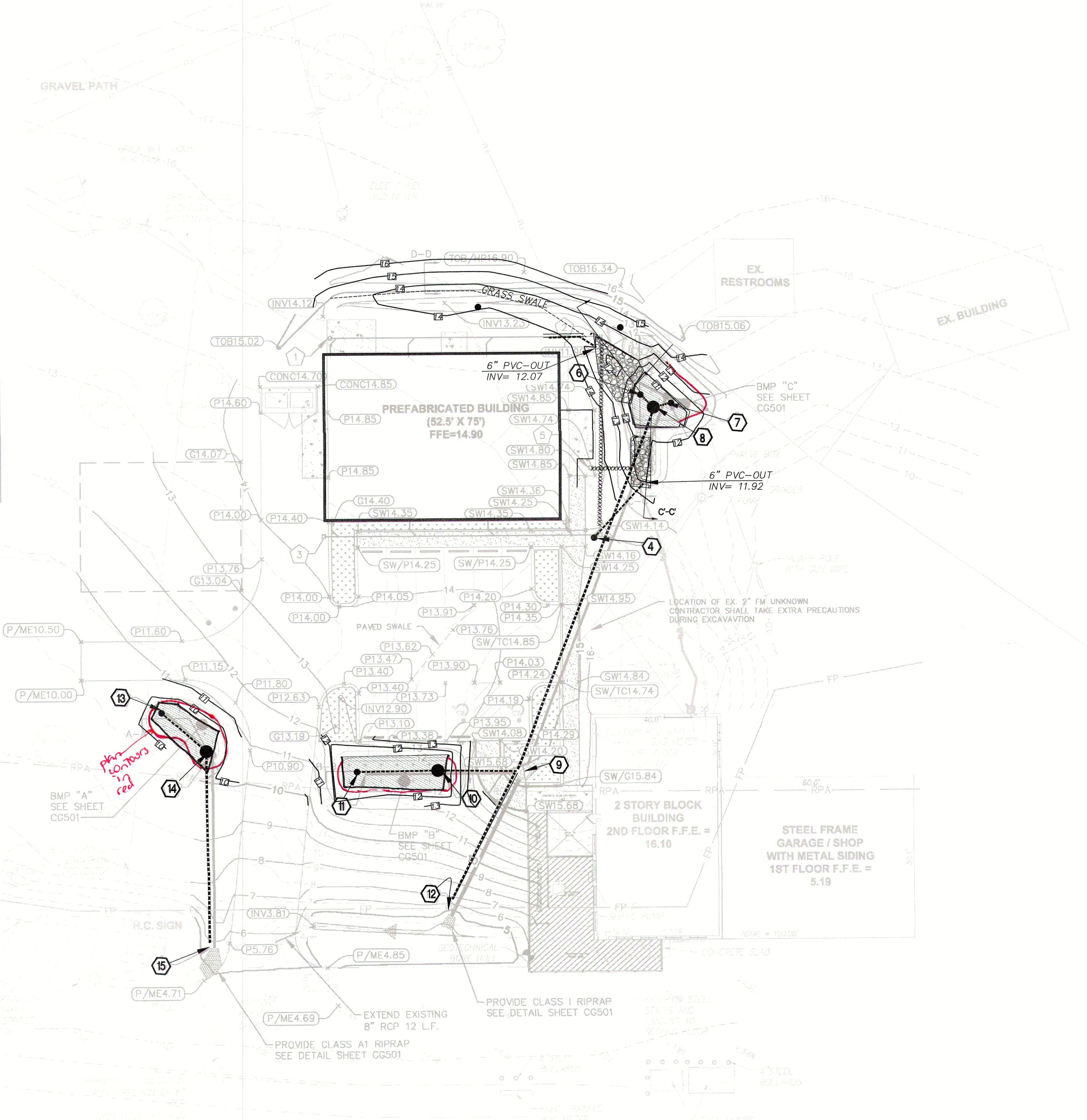
RECORD DRAWINGS

STORMWATER AS-BUILT DRAWINGS  
JAMES CITY COUNTY  
MARINA WAREHOUSE  
PREPARED FOR  
DAVID A. NICE BUILDERS, INC



\*\* SHOT IN VERTICAL ELBOW-NOT PIPE INVERT

DRAINAGE TABLE				
STRUCTURE ID	TYPE	STRUCTURE DETAILS	PIPES IN	PIPES OUT
1	CLEANOUT	RIM: 14.79 INV: 12.91	BUILDING DOWNSPOUT	TO STRC 2: 85 L.F. 6" PVC @ 0.50%
2	CLEANOUT	RIM: 13.52 INV: 12.48	FROM STRC 1: 85 L.F. 6" PVC @ 0.50%	TO STRC 5: 40 L.F. 8" @ 0.50%
3	CLEANOUT	RIM: 14.26 INV: 12.91	BUILDING DOWNSPOUT	TO STRC 4: 64 L.F. 6" PVC @ 0.50%
4	CLEANOUT	RIM: 13.90 INV: 12.24 **	FROM STRC 3: 64 L.F. 6" PVC @ 0.50%	TO OUTFALL: 23' 1.39% TO STRC 5: 25 L.F. 6" @ 0.50%
5	ELIMINATED CLEANOUT	RIM: 14.76 INV: 12.28	FROM STRC 1: 20 L.F. 6" PVC @ 1.00% FROM STRC 2: 40 L.F. 6" PVC @ 0.50%	TO BMP "D": 12 L.F. 6" PVC @ 0.50% INVERT @ BMP "C" OUTFALL = 12.22
6	4" UNDERDRAIN CLEANOUT (VERTICAL INSPECTION PORT)	RIM: 12.51 INV: 7.33	N/A	TO STRC 8: 6' L.F. 6" PERFORATED PVC @ 0.83%
7	4" UNDERDRAIN CLEANOUT (VERTICAL INSPECTION PORT)	RIM: 12.60 INV: 7.35	N/A	TO STRC 8: 6' L.F. PERFORATED PVC @ 1.17%
8	BIORETENTION "C" OUTLET STRUCTURE 12" RISER W/ BEEHIVE GRATE	RIM: 11.32 INV: 7.28	6' L.F. 6" PERFORATED PVC @ 0.83% FROM STRC 7: 6' L.F. 6" PERFORATED @ 1.17%	TO STRC 9: 120' 0.57% TO STRC 8: 6' L.F. 8" PVC @ 4.40%
9	48" JUNCTION MANHOLE	RIM: 15.33 INV IN (STRC 8): 6.60 INV IN (STRC 10): 7.72 INV OUT (STRC 12): 6.56	120' L.F. 8" PVC @ 0.57% FROM STRC 10: 24' L.F. 6" PVC @ 4.00% 24' L.F. 6" PVC @ 3.25%	TO STRC 12: 44' L.F. 8" PVC @ 4.40%
10	BIORETENTION "B" OUTLET STRUCTURE 12" RISER W/ BEEHIVE GRATE	RIM: 11.64 INV: 8.50	25' L.F. 6" PERFORATED PVC @ 0.56%	TO STRC 9: 25' L.F. 6" PERFORATED PVC @ 0.56%
11	4" UNDERDRAIN CLEANOUT (VERTICAL INSPECTION PORT)	RIM: 12.36 INV: 8.64	N/A	TO STRC 10: 25' L.F. 6" PERFORATED PVC @ 0.56%
12	8" PIPE END	INV IN (STRC 9): 5.11	44' L.F. 8" PVC @ 3.30%	DISCHARGES TO DITCH
13	4" UNDERDRAIN CLEANOUT (VERTICAL INSPECTION PORT)	RIM: 10.74 INV: 6.10	N/A	TO STRC 14: 18' L.F. 6" PERFORATED PVC @ 0.50%
14	BIORETENTION "A" OUTLET STRUCTURE 12" RISER W/ BEEHIVE GRATE	RIM: 9.45 INV: 6.01	FROM STRC 13: 18' L.F. 6" PERFORATED PVC @ 0.50%	TO STRC 15: 59' L.F. 8" PVC @ 1.12%
15	8" PIPE END	INV IN (STRC 14): 5.35	FROM STRC 15: 59' L.F. 8" PVC @ 1.12%	DISCHARGE



SURVEYOR'S CERTIFICATION

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A.D. Sebert

A.D. SEBERT, L.S.

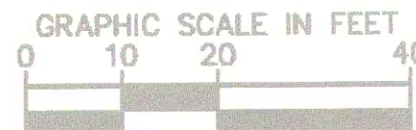
07/05/2017  
DATE

LEGEND

- PROPERTY LINE
- EXISTING CONTOUR
- PROPOSED CONTOUR
- PROPOSED SLOPE
- PROPOSED SPOT ELEVATION
- SWALE LINE
- BERM LINE

GRADING KEYNOTE

- ME: MATCH EXISTING
- P: PAVEMENT
- FFE: FINISHED FLOOR ELEVATION
- TC: TOP OF CURB
- SW: SIDEWALK
- CONC: CONCRETE
- G: GROUND
- LP: LOW POINT
- HP: HIGH POINT
- INV: INVERT
- RIM: TOP OF BERM
- BOT: BOTTOM OF BMP

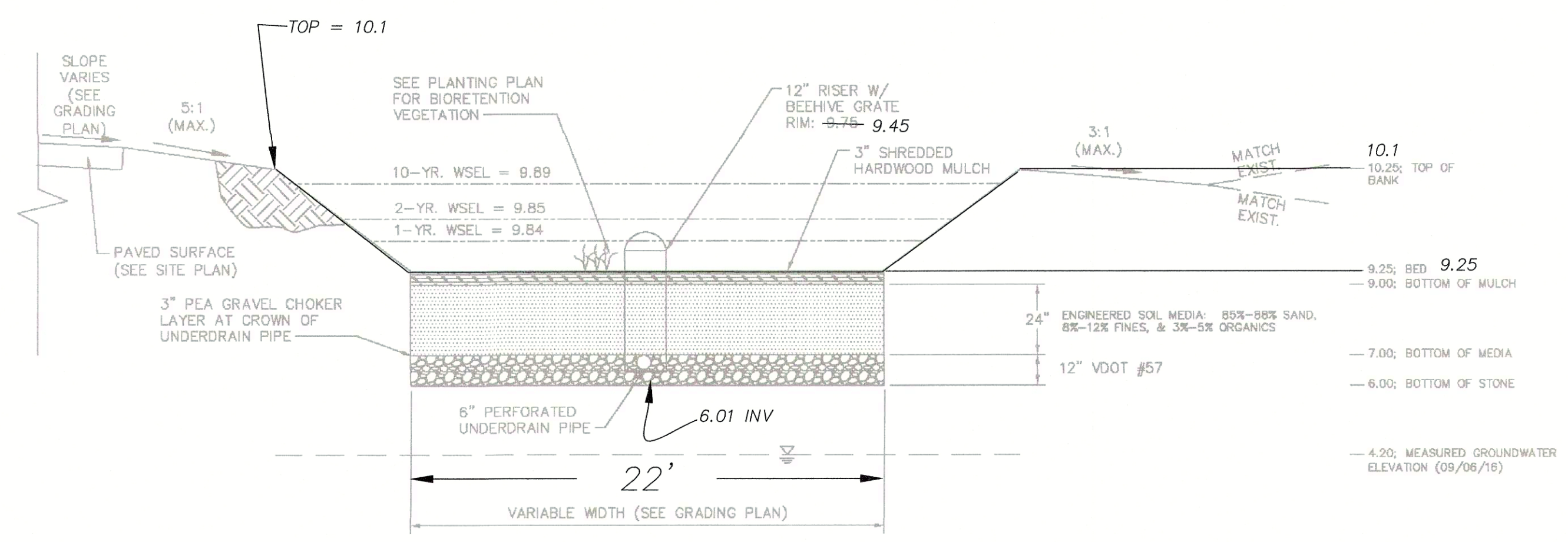




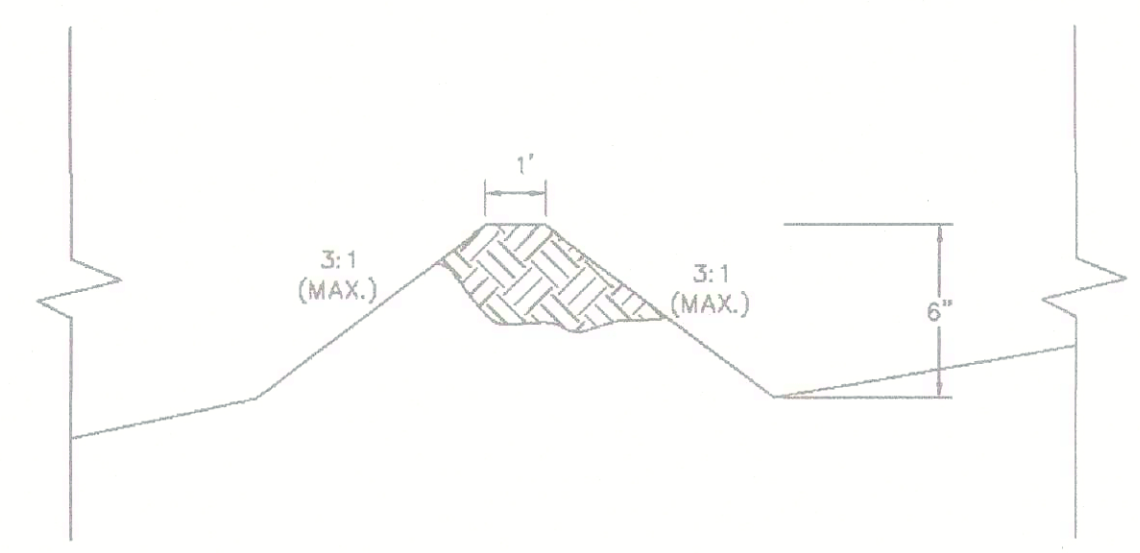
- LEGEND:
- N/F NOW OR FORMERLY
  - IRF IRON ROD FOUND
  - IPF IRON PIPE FOUND
  - IRS IRON ROD SET
  - BSL BUILDING SETBACK LINE
  - R/W RIGHT-OF-WAY
  - SMH SANITARY MANHOLE
  - CO SANITARY CLEANOUT
  - WM WATER METER
  - WV WATER VALVE
  - X 98.2 EXISTING SPOT ELEVATION
  - 98.2 PROPOSED SPOT ELEVATION

STORMWATER AS-BUILT DRAWINGS  
JAMES CITY COUNTY  
MARINA WAREHOUSE  
PREPARED FOR  
DAVID A. NICE BUILDERS, INC

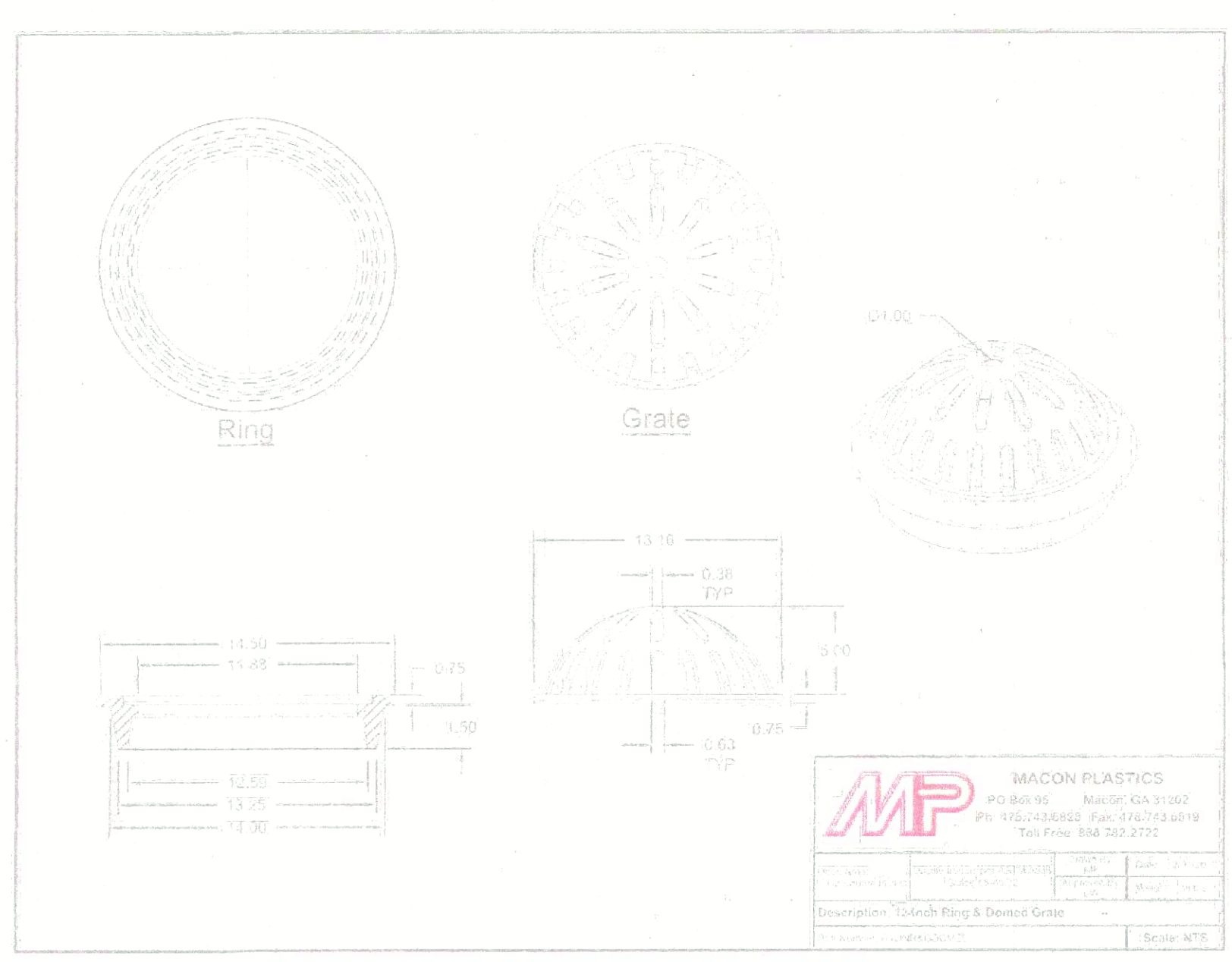
REVISIONS	
DESIGNED BY:	ADS
SCALE:	N/A
DATE:	07/05/2017
PROJECT NO.	J464-1
DRAWING NO.	3 OF 3



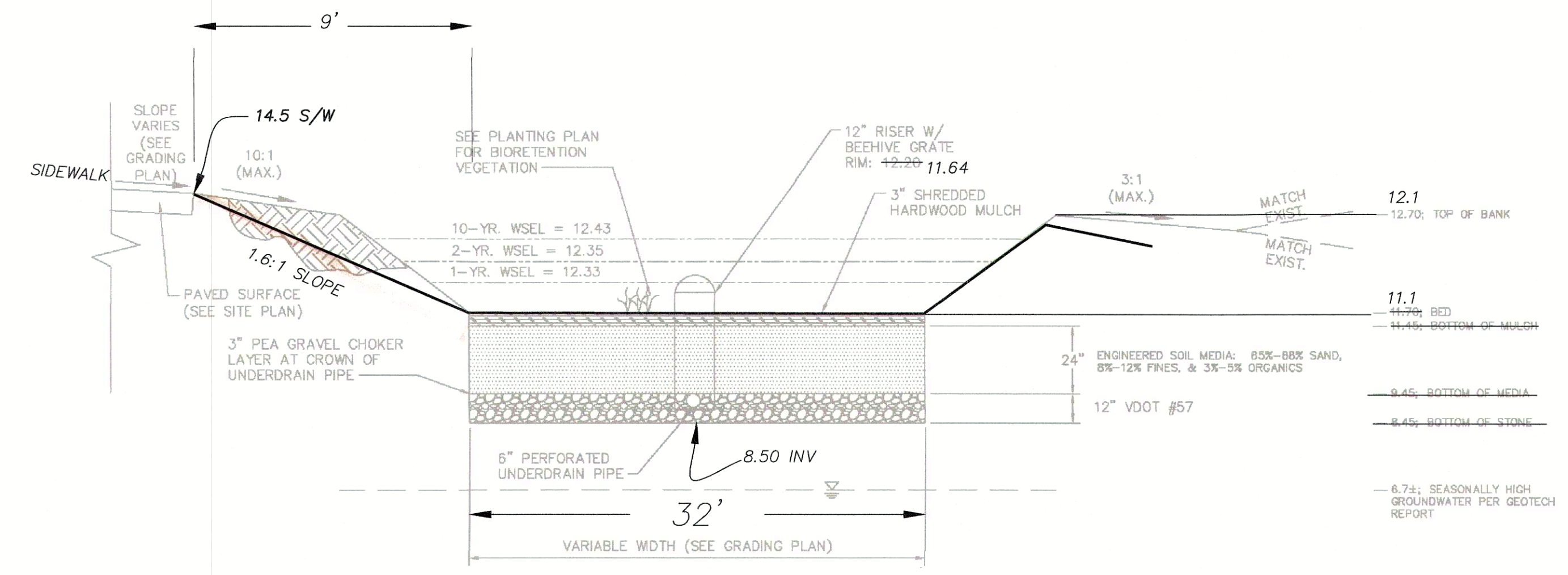
LEVEL 1 BIORETENTION 'A' TYPICAL  
SECTION (SECTION A-A, N.T.S.)



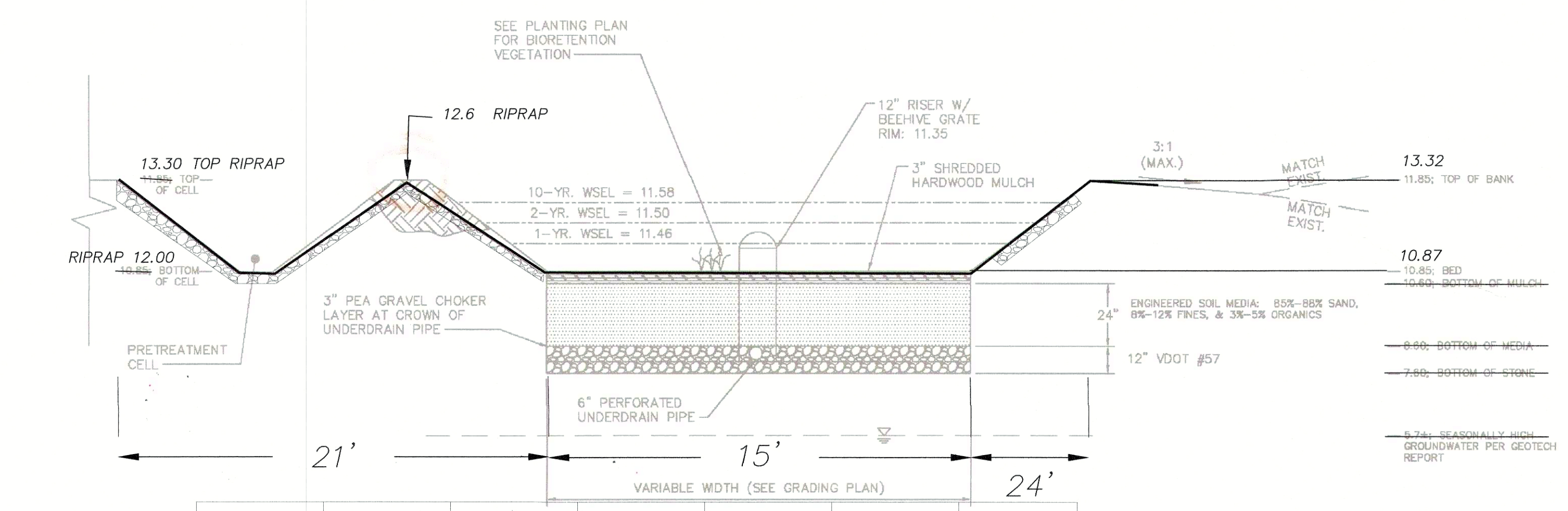
BERM - TYPICAL SECTION  
(SECTION D-D, N.T.S.)



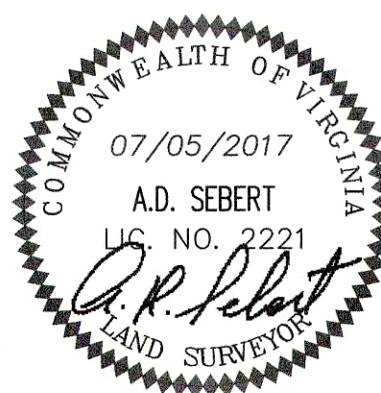
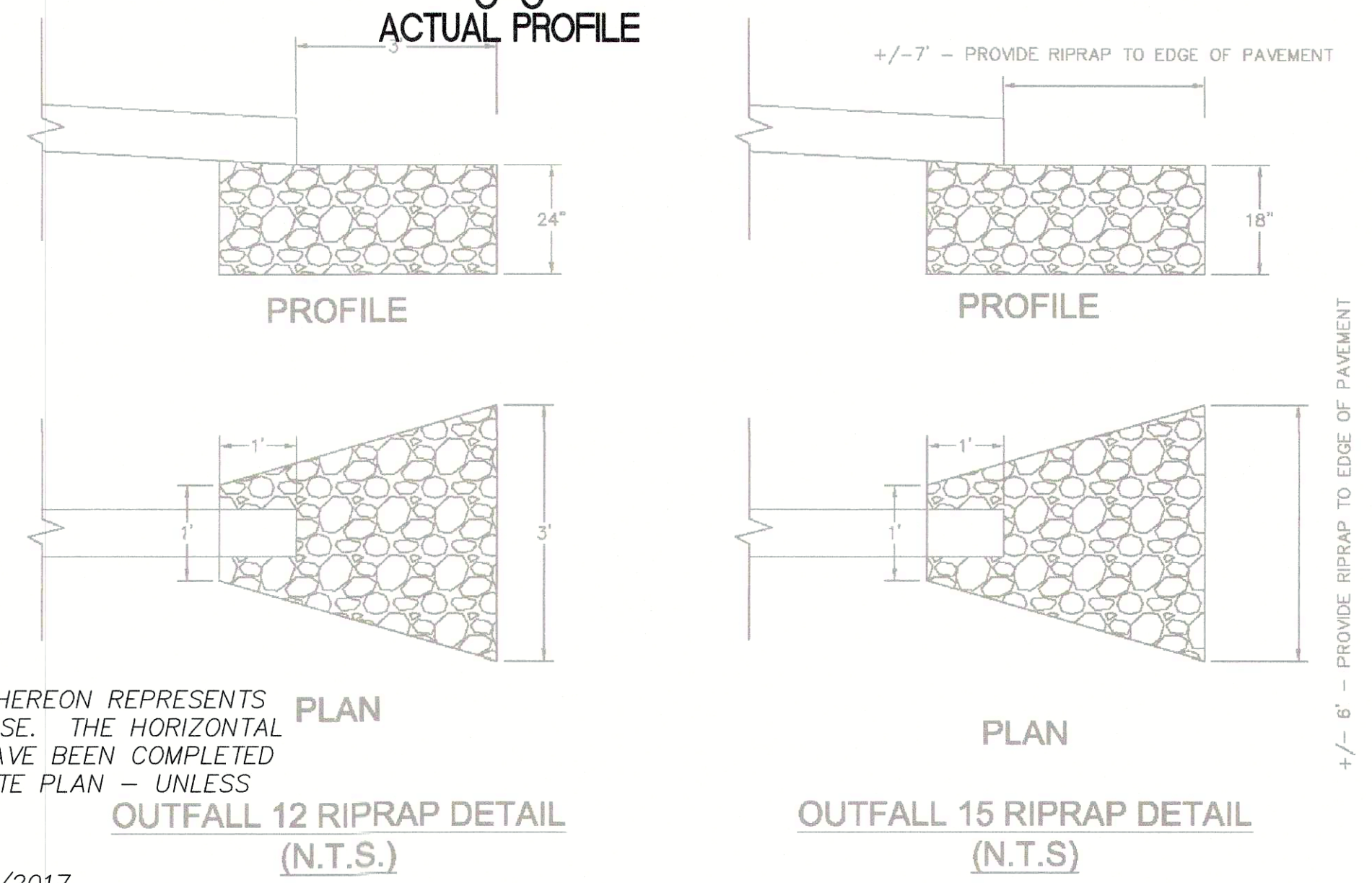
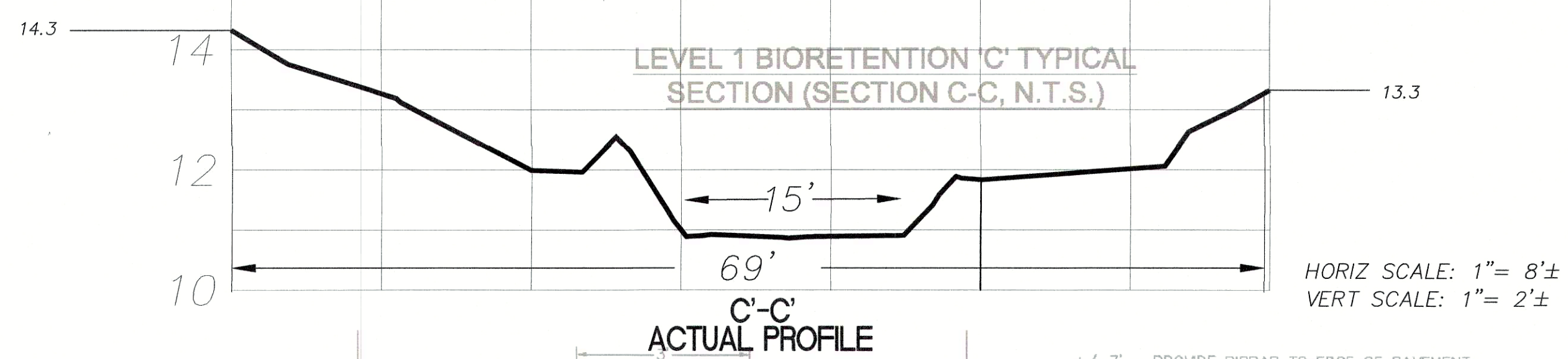
12" BEEHIVE GRATE DETAIL



LEVEL 1 BIORETENTION 'B' TYPICAL  
SECTION (SECTION B-B, N.T.S.)



LEVEL 1 BIORETENTION 'C' TYPICAL  
SECTION (SECTION C-C, N.T.S.)



SURVEYOR'S CERTIFICATION

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*A.D. Sebert*  
A.D. SEBERT, L.S.  
07/05/2017  
DATE



Billsburg Brewery - Taproom Exterior





Billsburg Brewery - Taproom Interior





Billsburg Brewery - Brewhaus Exterior





Billsburg Brewery - Brewhaus Interior





Billsburg Brewery - Event Area





Billsburg Brewery - Miscellaneous





# JAMES CITY COUNTY ECONOMIC DEVELOPMENT AUTHORITY

## MARINA DEED OF LEASE

THIS AMENDED DEED OF LEASE, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the Economic Development Authority of James City County, Virginia a political subdivision of the Commonwealth of Virginia (the “EDA”), and Billsburg Brewery, Inc., a Virginia stock corporation (“Billsburg” or the “Tenant”) (each a “Party” and together, the “Parties”).

### WITNESSETH:

WHEREAS, the EDA has leased a portion of 2054 Jamestown Road, Williamsburg, Virginia 23185, further identified as James City County Tax Map Parcel Number 4640100012 (in its entirety referred to as the “Marina”) from the County of James City, Virginia (the “County”); and

WHEREAS, the EDA advertised a Request for Proposal, published December 12 and 16, 2015 (the “RFP”) to establish a commercial use at the Marina. The Tenant submitted a proposal dated January 8, 2016 (the “Proposal”). The RFP and Proposal are incorporated herein by reference.

WHEREAS, the EDA determined that the Proposal was responsive to the RFP and further determined that the Proposal was acceptable; and

WHEREAS, on August 2, 2016, the EDA leased the second story of an existing building located at the Marina to the Tenant (“Lease 1”), which lease contemplated the construction of a warehouse facility at the Marina to be occupied by the Tenant; and

WHEREAS, on December 9, 2016, the EDA leased a portion of the Marina to the Tenant, upon which a brewery building was constructed (“Lease 2”); and

WHEREAS, construction of the brewery building is complete and Billsburg is operational; and

WHEREAS, amendments to Lease 1 and Lease 2 are necessary in order to clarify terms and combine Lease 1 and Lease 2 into one comprehensive lease.

NOW, THEREFORE, in consideration of the below stated rent and other terms and conditions agreed to in this Amended Deed of Lease, which shall amend, supersede, and replace Lease 1 and Lease 2, hereinafter referred to as the “Lease,” the EDA does hereby lease to Tenant, and Tenant does hereby rent from the EDA, the following interests in the described lots, pieces, or parcels of land, together with all improvements thereon to-wit:

An exclusive leasehold interest in a portion of the Marina, being the area shown in red on the site plan titled, “JCC MARINA WAREHOUSE PREPARED FOR JAMES CITY COUNTY ECONOMIC DEVELOPMENT, JAMES CITY COUNTY, VIRGINIA,” which is attached to and made a part of this Lease as **Exhibit A**;

AND

A non-exclusive leasehold interest in the area shown in blue on Exhibit A (the "Common Area") (all together with the exclusive interest referred to as, the "Premises");

AND

A non-exclusive leasehold interest in a shared area that provides access and parking as shown in green on Exhibit A (the "Shared Area")

AND

All rights appurtenant to the Premises including, without limitation, stormwater drainage rights, and ingress and egress easements which are insurable under a leasehold title insurance policy.

TO HAVE AND TO HOLD said land and improvements thereon and the privileges and appurtenances thereunto belonging unto the Tenant, its permitted successors and assigns, for the term hereinafter provided, and upon all of the following terms and conditions, to which the parties mutually covenant and agree:

## **1. WAREHOUSE AND TAPROOM**

This Lease is executed by the Parties with the understanding that the EDA constructed a warehouse facility on the Premises consistent with County IFB # 17-11265 (with any reasonable alterations), generally shown as, "PREFABRICATED BUILDING" on Exhibit A (the "Building"). The Building shall be suitable for alteration by the Tenant at the Tenant's cost to satisfy its needs as set forth in the Proposal. Also included as part of this Lease is the second floor of the building generally shown as, "2 STORY BLOCK BUILDING 2ND FLOOR" on Exhibit A (the "Taproom") (the Building and the Taproom together referred to in this Lease as, the "Brewery Buildings").

## **2. TERM**

a. This Lease shall commence upon the signature of all parties. Rent payments as defined in Section 3 commenced upon September 1, 2017 (the "Rent Commencement Date").

b. The initial term of this Lease shall be for ten (10) years and shall end on the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date. Provided the Tenant is not in default, this Lease shall automatically renew for up to two (2) additional terms of five (5) years each (each a "Renewal Term"). The Tenant may give notice of intent to terminate this Lease upon written notice to the EDA at least one hundred and eighty (180) days prior to the expiration of the Initial Term or any Renewal Term. The Initial Term in conjunction with any Renewal Term of this Lease is referred to as the "Term." The expiration of this Lease at the end of the Term shall be referred to as the "Expiration Date." Subsequent renewals are permitted upon mutual written agreement between the parties.

### 3. RENT

During the first year of the Initial Term of this Lease, Tenant covenants to pay a base annual rental to the EDA equal to Sixty Thousand Dollars (\$60,000), which shall be payable in equal monthly installments in advance on the first day of each month in the amount of Five Thousand Dollars (\$5,000) ("Rent"). Rent shall increase by three percent (3%) for each of the first five (5) subsequent years of the Initial Term. Rent for each of the remaining four years of the Initial Term shall be equal to a base annual rent of Seventy Thousand Dollars (\$70,000), which shall be payable in equal monthly installments in advance on the first day of each month in the amount of Five Thousand Eight Hundred Thirty-three and 33/100 Dollars (\$5,833.33). Rent shall increase five percent (5%) for each Renewal Term. Rent shall be paid according to the following schedule:

YEAR	ANNUAL	MONTHLY
1	\$60,000.00	\$5,000.00
2	\$61,800.00	\$5,150.00
3	\$63,654.00	\$5,304.50
4	\$65,563.62	\$5,463.64
5	\$67,530.53	\$5,627.54
6	\$69,556.44	\$5,796.37
7	\$70,000.00	\$5,833.33
8	\$70,000.00	\$5,833.33
9	\$70,000.00	\$5,833.33
10	\$70,000.00	\$5,833.33
11	\$73,500.00	\$6,125.00
12	\$73,500.00	\$6,125.00
13	\$73,500.00	\$6,125.00
14	\$73,500.00	\$6,125.00
15	\$73,500.00	\$6,125.00
16	\$77,175.00	\$6,431.25
17	\$77,175.00	\$6,431.25
18	\$77,175.00	\$6,431.25
19	\$77,175.00	\$6,431.25
20	\$77,175.00	\$6,431.25

The rent for any terms subsequent to the Final Expiration Date of this Lease shall be as mutually agreed upon by the parties.

The Tenant shall pay Rent to the EDA, on or before the first day of each calendar month during the Term, without previous demand or notice therefore by the EDA and without set-off or deduction. In the event that Rent initially becomes due on a day other than the first of the calendar month, that payment shall be prorated and the subsequent Rent payment shall be due on the first of the following month. Notwithstanding anything contained herein to the contrary, the Tenant's obligation to pay Rent under this Lease is completely separate and independent from any of the EDA's obligations under this Lease. For each monthly Rent payment the EDA receives after the tenth (10th) day of the month, the EDA shall be entitled to, in addition to all other remedies provided in this Lease, a late charge in the amount of five percent (5%) of all Rent due for such month. Rent shall be paid to the following:

#### **4. TAXES AND ASSESSMENTS**

The Tenant shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during the term hereof. The Tenant shall be responsible for the real estate taxes assessed on the Premises. In the event any or all of the taxes for which Tenant is responsible shall be assessed and taxed to the EDA, the Tenant shall pay to the EDA its share of such taxes within ten (10) days after delivery to the Tenant by the EDA of a statement in writing setting forth the amount of such taxes applicable to the Tenant.

#### **5. USE OF PREMISES**

a. The Tenant shall be permitted to use the Premises for the uses described in the Proposal (the "Brewery"), which includes any uses permissible under ABC laws for a brewery, and those that may be approved by a majority vote of the EDA, subject to the following provisions:

- i. The Tenant must obtain the EDA's permission prior to any proposed change in the size or scope of the Brewery or prior to establishing any new use at the Premises.
- ii. The Tenant shall never make any use of the Premises which is in violation of any federal, state, or local laws, rules, or regulations, whether now existing or hereafter enacted.
- iii. The Tenant may not make any use that is or may be a nuisance or trespass or makes such insurance unavailable to the EDA on the Premises.
- iv. The Tenant shall not make exclusive use of the Common Area or Shared Area without prior written agreement of the EDA.

b. The EDA shall have the option to reserve and use the Premises without cost up to three (3) times per year subject to the following conditions:

- i. No such use shall take place on a day that the Brewery is not in operation without prior written agreement by the Tenant.
- ii. Use of the Premises shall be requested by the EDA at least sixty (60) days prior to the date of use.
- iii. All good and services provided by the Tenant shall be agreed on and compensated independent of this Lease.

c. The EDA shall have use of the Common Area as the EDA sees fit. Nothing in this Lease shall restrict the EDA's use of the Common Area.

#### **6. CONDITION OF THE PREMISES**

a. The Tenant's occupancy and use of the Premises shall be the Tenant's representation to the EDA that the Tenant has examined and inspected the same, finds the Premises to be satisfactory for the Tenant's intended use, and constitutes the Tenant's acceptance of the Premises "AS IS." The Tenant shall deliver at the end of this Lease each and every part of the Premises in good repair and condition, ordinary wear and tear and damage by insured casualty excepted. The delivery of a key or other such tender of possession of the Premises to the EDA or to an employee of the EDA prior to the expiration of the Term shall not operate as a termination of this Lease or a surrender of the Premises except upon written notice by the EDA in accordance with the terms

hereof. The Tenant shall: (i) keep the Premises in good order; (ii) make repairs and replacements to the Premises as needed because of the Tenant's or its employees' or invitees' use, misuse, or primary negligence; and (iii) not commit waste.

b. Upon termination of this Lease or vacation of the Premises by the Tenant, the Tenant shall restore the Premises to the same condition as existed at the Rent Commencement Date at Tenant's sole expense; ordinary wear and tear, alterations and improvements approved pursuant to Section 10 of this Lease, and damage by insured casualty only excepted. The EDA, however, may elect to require the Tenant to leave non-approved alterations or improvements performed by or for the Tenant unless, at the time of such alterations, the EDA agreed in writing that such alterations could be removed upon the expiration or termination of this Lease, or upon Tenant's vacation of the Premises.

## **7. SIGNS**

The Tenant may not erect, install, or display any sign or other advertising material on or about the Premises without the prior written consent of the EDA, or in conflict with any state or local laws. The Tenant shall be solely responsible for the cost to install and maintain any signs erected on the Premises.

## **8. ASSIGNMENT, SUBLETTING AND MORTGAGING**

The Tenant shall not assign this Lease or sublet or place any mortgage upon the Premises, in whole or in part, without the EDA's prior written consent. If consent to assign or sublease is obtained, no such assignment or sublease shall in any way release or relieve the Tenant from any of its covenants or undertakings contained in this Lease, and in all cases under this paragraph, the Tenant shall remain liable on this Lease during the Term. The Tenant's request for consent to any subletting or assignment of this Lease shall be accompanied by a written statement setting forth the details of the proposed sublease or assignment and any other information the EDA deems relevant. The EDA shall have the right to (a) withhold consent; (b) grant consent; or (c) terminate this Lease as of the effective date of such sublease or assignment. After ten (10) days written notice to the Tenant of the EDA's intention to terminate, the Tenant may withdraw its request for consent and this Lease shall continue with its terms. In the event the Tenant does not withdraw its request for consent to sublet or assign, the EDA may elect to enter into a direct lease with the proposed assignee or subtenant. The Tenant shall be liable for reasonable expenses incurred by the EDA in connection with an assignment, subletting, or mortgage of the Premises.

## **9. UTILITIES**

a. Until such time as Section 9(c) takes effect, electric, water, and sewer services shall be in the name of the EDA or the County, and the Tenant shall reimburse the EDA or the County for all charges within ten (10) days of the EDA or the County giving notice that the same have become due. All other utility services shall be contracted for directly by the Tenant. The EDA and the County shall not be liable for any interruption or failure in the supply of any utility to the Premises and no abatement of Rent shall be allowed to the Tenant as a result thereof, unless such interruption is prolonged and is a result of the EDA's or the County's negligence, nor shall the Lease or any of the EDA's or the County's obligations be in any way affected thereby. The Tenant shall be responsible for the extension or expansion of all utilities necessary to serve any improvements made to the Premises pursuant to Section 10 of this Lease.

b. All utility charges incurred by the EDA or the County and attributable to the Brewery prior to this Amendment shall be paid by the Tenant on or before November 1, 2018 and shall be

charged to the Tenant as Additional Rent. Additional Rent for past utilities shall be One Thousand Six Hundred Seventy and 71/100 dollars (\$1,~~677~~60.71) per month.

c. Upon the occurrence of (i) Major Improvement to the Taproom by the Tenant; (ii) Major Improvement of the 2 Story Block Building by the EDA or the County; or (iii) relocation of the Tenant pursuant to Section 20, the Tenant shall, at its expense, separately meter all utilities serving the Building and the Taproom (as currently located or relocated) and separately contract for such services.

## **10. IMPROVEMENTS, REPAIRS, ALTERATIONS, AND MAINTENANCE**

a. All maintenance, upkeep, and repair ("Maintenance") of the Premises shall be performed or contracted for by the Tenant at its sole expense, excepting structural repairs of the Building covered by any warranty held by the EDA. The Tenant shall not be reimbursed for any Maintenance unless otherwise agreed to in writing by the EDA. The EDA shall immediately notify the Tenant in writing of any observed site deficiencies. The Tenant shall have thirty (30) calendar days from the day of receipt of written notification to correct the deficiency. E-mail shall constitute "written notification." If the deficiency is not corrected within this time period, the EDA may procure the required goods or services from other sources and hold the Tenant responsible for any resulting additional purchase, staff, and administrative costs limited to 10% of the repairs made by the EDA. This remedy shall be in addition to other remedies which the EDA may have.

b. The EDA shall participate in any repair to the extent that such repair is covered by a warranty held on the Building. The EDA covenants and agrees that it shall comply with the maintenance obligations of its lease with the County. Subject to the terms set forth in the lease between the County and the EDA, the County shall be responsible for the repair or replacement of all aspects of the Taproom, excepting only the electric heat pump/air conditioning unit, which the Tenant accepts "AS IS." Neither the EDA nor the County shall repair or replace the existing electric heat pump/air conditioning unit in the Taproom. Neither the EDA nor the County shall be liable (and shall assess the costs thereof to the Tenant) when any repair or replacement of the Premises is made necessary by the negligent or willful acts or omission of the Tenant, its agents, invitees, or employees. The EDA shall not be liable for or have any obligation to repair or replace any improvements made to the Premises by the Tenant.

c. The Tenant may make improvements to the Brewery Buildings using its own resources. The Tenant may make non-structural alterations, additions, or improvements to the Brewery Buildings not exceeding Five Thousand Dollars (\$5,000) in cost ("Minor Improvement") without the prior written consent of the EDA. Any external Minor Improvement shall be a neutral or muted earth tone color that complements the Marina. Other than routine maintenance, the Tenant shall not make any alterations of, additions to, or changes to the Brewery Buildings that (1) exceed five thousand dollars (\$5,000) in cost, or (2) are structural ("Major Improvement") without the prior written consent of the EDA, such consent not to be unreasonably withheld. Minor Improvements that, at the EDA's sole discretion, aggregate to a Major Improvement, shall be treated as a Major Improvement under this Lease. All such Minor Improvements and Major Improvements (collectively, "Improvements") shall meet local, state, and federal requirements. The Tenant shall perform all work required to improve the Brewery Buildings to a finished condition ready for the conduct of the Tenant's business. The Tenant shall provide construction drawings to the EDA for each proposed Improvement and shall provide the EDA with a cost estimate for each. The EDA shall consider each such proposed Major Improvement and may, at its sole discretion, approve, conditionally approve, or deny each such proposed Major Improvement or any portion thereof. Upon completion of any Improvement, the Tenant shall provide the EDA with a set of as-built construction plans. Equipment and machinery shall not be deemed Improvements under this Lease.

d. The Tenant may, with the prior written consent of the EDA, make improvements to the landscaping on the Premises, such as, but not limited to, the installation of sod, mulch, plants, trees, benches, water features, etc. ("Landscape Improvements"). Any request for Landscape Improvements shall be submitted to the EDA in writing along with plans illustrating the location and type of plantings and improvements proposed. Such plans shall be submitted by the EDA to the County for review and approval by the appropriate County departments. The EDA shall, in writing, approve, conditionally approve, or deny the Landscape Improvements within forty-five (45) days of receipt of the request and illustrative plans.

e. The Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of the Tenant. Should any claim of lien or other lien be filed against the Premises by reason of any act or omission of the Tenant or any of the Tenant's agents, employees, contractors, or representatives, then the Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within forty-five (45) days after the filing thereof. The EDA shall give the Tenant notice of any lien filed against the Premises for which the EDA has actual notice. Should the Tenant fail to discharge such lien within such forty-five (45) day period, then the EDA may discharge the same, in which event the Tenant shall reimburse the EDA, on demand, the amount of the lien or the amount of the bond, if greater, plus all reasonable administrative costs incurred by the EDA in connection therewith. The remedies provided herein shall be in addition to the other remedies available to the EDA under this Lease or otherwise. The Tenant shall have no power to do any act or make any contract that may create or be the foundation of any lien, mortgage, or other encumbrance upon the reversionary or other estate of the EDA, or any interest of the EDA in the Premises. NO CONSTRUCTION LIENS OR OTHER LIENS FOR ANY LABOR, SERVICES, OR MATERIALS FURNISHED TO THE PREMISES SHALL ATTACH TO OR AFFECT THE INTEREST OF EDA IN AND TO THE PREMISES.

f. Upon expiration or earlier termination of this Lease, the Tenant's leasehold interest in the Premises shall terminate and title to the Improvements shall automatically pass to, vest, belong to, and become the property of the EDA. The Tenant shall, if the EDA shall deem it appropriate, execute any further documents to confirm this transfer of title to the EDA with cost of charge to the EDA. The Tenant shall be responsible for the removal of its personal property, upon expiration or earlier termination of this Lease, provided that the Tenant shall be responsible for the cost of repair of any damage caused by the removal. The EDA and Tenant shall negotiate in good faith with regard to the removal of equipment and machinery and/or the sale of same to the EDA.

g. The Tenant shall, on the last day of the term, or upon the sooner termination of this Lease, peaceably and quietly surrender the Premises and equipment to the EDA, broom-clean, including all Improvements, alterations, rebuildings, replacements, changes, or additions placed by the Tenant thereon, in as good condition and repair as the same were in at the commencement of the original term, normal wear and tear and damage by insured casualty excepted.

## **11. EMINENT DOMAIN**

If all of the Premises, or such part thereof as will make the same unusable for the purposes contemplated by this Lease, be taken under the power of eminent domain (or a conveyance in lieu thereof), then this Lease shall terminate as of the date possession is taken by the condemnor, and Rent shall be adjusted between the EDA and the Tenant as of such date. If only a portion of the Premises is taken and the Tenant can continue use of the remainder, then this Lease will not terminate, but Rent shall abate in a just and proportionate amount to the loss of use occasioned by the taking.

The EDA shall be entitled to the entire proceeds of any condemnation award; provided, however, that Tenant may pursue a separate claim for the book value less depreciation of Improvements placed on the Premises by Tenant at its own expense, as shown on Tenant's most recent federal income tax return or as certified as a book value amount by Tenant, adjusted for subsequent additions and depreciation to the date of such condemnation, plus amounts, to compensate Tenant for expenses special to Tenant provided the foregoing does not reduce the EDA's award.

## **12. ACCESS TO PREMISES**

a. The EDA shall have the right, upon twenty four (24) hours prior notice to the Tenant (except in the case of an emergency, in which event the EDA shall have the right to enter the Premises as the EDA reasonably deems necessary), either itself or through its authorized agents, to enter the Premises (i) for the purposes of inspection, (ii) to make repairs, alterations or changes as EDA deems necessary after the Tenant has neglected its obligations under this Lease, and (iii) to show the Premises to prospective lessees, mortgagees, and/or purchasers. The EDA shall have the right, either itself or through its authorized agents, to place signs in conspicuous places about the Premises and to otherwise advertise the Premises for sale or rent, and to enter the Premises at all reasonable times for inspection to show prospective lessees, mortgagees, and/or purchasers if within one hundred eighty (180) days prior to the Expiration Date as extended by any exercised option for a Renewal Term.

b. The Tenant, its agents, employees, invitees, and guests, shall have the right of ingress and egress to the Common Area, Shared Area, and public areas of the Marina, provided the EDA and the County may regulate and control such access, or as needed for making repairs and alterations.

c. The EDA shall furnish the Tenant with a key to the Building and the Taproom. All keys to the Building and Taproom shall remain the property of the EDA. No additional locks shall be allowed on any door of the Building or the Taproom without the EDA's written permission, which shall not be unreasonably withheld. Notwithstanding the foregoing, the Tenant may install locks on the doors of individual offices within the Building or the Taproom, provided that the Tenant shall provide a copy of any such keys to the EDA. The Tenant shall supply the EDA with a copy of any keys necessary to access the Building and the Taproom. Upon termination of this Lease, the Tenant shall surrender to the EDA all keys to the Building and the Taproom, and give to the EDA the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, in the Building and the Taproom.

d. During the Brewery's normal operating hours, the Tenant shall keep the bathrooms located in the Taproom open for use by those using the County's park facilities at the Marina.

## **13. HAZARDOUS SUBSTANCE**

a. The Tenant shall not knowingly cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Premises by the Tenant, the Tenant's agents, employees, or contractors without the prior express written consent of the EDA.

b. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive or corrosive and that is or becomes regulated by any local government, the Commonwealth of Virginia or the United States Government. "Hazardous Substance" also includes any and all materials or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local law or becomes



regulated by any federal, state or local authority. "Hazardous Substance" includes, but is not restricted to, asbestos, polychlorinated biphenyl's (PCB's), solvents, printing inks, pesticides, solvents, and leads. "Hazardous Substance" excludes petroleum products when said petroleum products are stored and dispensed in accordance with all federal, state, and local laws and regulations. Notwithstanding the foregoing, ordinary items such as propane, paint, cleaning supplies, etc. shall not be deemed Hazardous Substances.

c. The Tenant shall provide the EDA, in a timely manner, a Safety Data Sheet ("SDS") upon the EDA's request. Said SDS shall describe the chemical properties of any hazardous substances which may be used, stored, generated, or disposed of on or in the Premises.

## **14. INSURANCE**

a. At all times during the Lease, at its own cost and expense, the Tenant shall keep or cause to be kept on all Improvements, alterations, renovations, replacements, substitutions, changes, equipment, fixtures, motors, and machinery owned or leased by the Tenant and installed in or used in connection with the Premises, insurance against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered), flood and such other hazards, casualties, risks, and contingencies now covered by or that may hereafter be considered, as included within the standard form extended coverage endorsement, in an amount equal to the actual replacement cost (the "Full Insurable Value") and sufficient so that no co-insurance penalty shall be invoked in case of loss. Such Full Insurable Value shall be determined from time to time at the request of the EDA (no more often than once every year) but at the expense of the Tenant by the fire insurance company carrying the highest amount of fire insurance on the Premises or its agent, or by an appraiser selected by the Tenant that is experienced in insurance appraisals who is approved in writing by the EDA which approval shall not be unreasonably withheld. The failure of the EDA to request such appraisal shall not release the Tenant from its obligations hereunder.

b. At all times during the Lease, at its own cost and expense, the Tenant shall provide and keep in force comprehensive general liability insurance in standard form, protecting the Tenant and naming the EDA as an additional insured, on a primary basis with no participation required by the EDA's liability policy, against personal injury, including without limitation, products and completed operations, personal and advertising injury, bodily injury, death, or property damage and contractual liability on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. If the Tenant maintains broader coverage and/or higher limits than the minimums shown above, the EDA requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the EDA. The EDA reserves the right to amend these limits from time to time during the course of the Lease. All such policies shall cover the entire Premises and any improvements thereon, including parking, common areas, means of access, and roadways therein, and streets and sidewalks adjacent thereto.

c. At all times during the Lease when the Tenant is engaged in the construction or reconstruction of any Improvement, or repairs thereof, at its own cost and expense, the Tenant shall provide and keep in force for the benefit of the EDA and the Tenant, "all risk" builders risk insurance on the Premises and all Improvement(s) under construction naming the EDA as a loss payee on the policy.

d. At all times during the Lease, at its own cost and expense, the Tenant shall purchase and keep in force worker's compensation insurance and employer's liability insurance for all employees of the Tenant in strict compliance with the laws of the Commonwealth of Virginia in

the following minimum amounts: Coverage A – Statutory, Coverage B - \$100,000/\$100,000/\$500,000.

e. All of the policies of insurance required by this Lease shall be i) in form and substance as reasonably approved by the EDA; ii) underwritten only by companies licensed in the Commonwealth of Virginia which have a then-current Alfred M. Best Company, Inc. (or if it no longer exists, a then comparable rating service) general policyholder's rating of A or better (or the equivalent thereof) and a financial rating of VII or better (or the equivalent thereof); iii) accompanied by evidence of payment of premiums thereon to the insurance companies or their agents, including evidence of current annual payment, if on an installment payment basis; iv) contain standard waiver of subrogation clauses; and v) provide that they may not be canceled by the insurer for non-payment of premiums or otherwise until at least thirty (30) days after a receipt of the proposed cancellation, and in any event, shall not be invalidated, as to the interests of the Tenant therein, by any act, omission or neglect of the Tenant (other than nonpayment of premiums), which might otherwise result in a forfeiture or suspension of such insurance, including without limitation, the occupation or use of the Premises for purposes more hazardous than those permitted by the terms of the policy, any foreclosure of any leasehold deed of trust and any change in title or ownership of the Premises. If requested by the EDA, copies of all insurance policies required by this Lease shall be delivered by the Tenant to the EDA. All insurance policies shall be renewed by the Tenant and proof of such renewals, including appropriate endorsement page(s), accompanied by evidence of the payments of the premiums thereon to the insurance companies or their agents, shall be delivered to the EDA, at least twenty (20) days prior to their respective expiration dates. All self-insured retentions, deductibles and aggregate limits on any required insurance must be disclosed and approved by the EDA.

f. The EDA and the Tenant mutually release and discharge each other (as well as the officers, directors, partners, agents and employees of each other) from responsibility and liability (by way of subrogation or otherwise) for loss or damage to any building, structure, equipment, or other real or personal property of the other, or any resulting loss of income or business, that may arise from a fire or other casualty or is otherwise covered by insurance. The above releases also shall apply to any third party, including any insurance company, claiming through or under a party as a result of a right of subrogation. All casualty insurance policies required to be maintained under this Lease shall contain "waiver of subrogation" clauses to carry out these release provisions.

## **15. DAMAGE TO PREMISES**

If, by reason of such fire or other casualty, the Premises is rendered wholly untenable, the Rent and other charges payable by the Tenant shall be fully abated, or if only partially damaged, such rent and other charges shall be abated proportionately as to that portion of the Premises rendered untenable, in either event (unless the Lease is terminated, as aforesaid) from the date of such casualty until (i) occupancy of the Premises by Tenant; (ii) the date the EDA has the Premises ready for occupancy by the Tenant provided the Tenant has been given at least fourteen (14) days' notice of same, or (iii) the date the EDA could have had the Premises ready had there been no delays attributable to the Tenant. The Tenant shall continue the operation of the Tenant's business in the Premises or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management. However, if such damages or other casualty shall be caused by the negligence or other wrongful conduct of the Tenant or of the Tenant's subtenants, licensees, contractors, or invitees, or their respective agents or employees, there shall be no abatement of Rent or other charges. Notwithstanding the foregoing, the Tenant may elect to obtain loss of rents insurance coverage covering a period of no less than twelve (12) months, in which event the preceding sentence stating that there shall be no abatement of rent or other charges shall not be applicable. If the Tenant elects to obtain such insurance

coverage, the policy must be issued by an insurance carrier reasonably acceptable to the EDA, and the Tenant shall deliver to the EDA a certificate of insurance evidencing the required insurance coverage, which shall be renewed and a renewal certificate provided to the EDA no later than thirty (30) days prior to the expiration date of such insurance policy. Except for the abatement of the Rent and other charges hereinabove set forth, the Tenant shall not be entitled to, and hereby waives all claims against the EDA for any compensation or damage for loss of use of the whole or any part of the Premises and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. Notwithstanding the foregoing provisions, if damage or loss occurs to the Premises during the final two (2) years of the Initial Term or any Renewal Term, where the costs to repair such damage or loss exceeds twenty-five percent (25%) of the replacement cost of the Premises, then in that event the EDA and/or the Tenant may, at its respective election, terminate this Lease upon written notice to the other party within sixty (60) days of the date such damage or loss occurs. In the event the EDA is repairing the Premises, it shall promptly undertake such repairs and follow them through to a conclusion.

## **16. LANDLORD'S LIEN, PROPERTY OF TENANT**

All trade fixtures, personal property, equipment, inventory and merchandise belonging to the Tenant which are, or may be, put into the Building during the Term, whether exempt or not from sale under execution and attachment under the laws of Virginia, shall at all times be subject to, and the Tenant hereby grants to the EDA, a first priority lien and security interest in favor of the EDA, for the purpose of securing all Rent, additional rent, or other sums which may become due to the EDA from the Tenant under this Lease. For the purposes of the Tenant receiving financing, the EDA will, upon request by the Tenant, subordinate its lien priority to a Purchase Money Security Interest. All trade fixtures, personal property, equipment, inventory and merchandise belonging to the Tenant which are, or may be, put into the Taproom during the Term, whether exempt or not from sale under execution and attachment under the laws of Virginia, shall at all times be subject to, and the Tenant hereby grants to the EDA, a second priority lien and security interest in favor of the EDA, for the purpose of securing all Rent, additional rent, or other sums which may become due to the EDA from the Tenant under this Lease.

Upon default or breach of any covenants of this Lease, the EDA shall have all remedies available under the Uniform Commercial Code enacted in Virginia including, but not limited to, the right to take possession of the above mentioned property and dispose of it by sale in a commercially reasonable manner. The Tenant hereby agrees to execute financing statements and continuation statements upon a request to do so by the EDA for the purpose of recording same in the appropriate public records in order to perfect the EDA's security interest, serving notice to third parties of the security interest herein granted. Upon the failure of the Tenant to so execute upon request, the Tenant does hereby appoint the James City County Attorney's Office as Tenant's attorney in fact for said purpose. The Tenant agrees to pay, as additional rent, all filing fees, taxes and other costs and expenses incurred by the EDA in recording such financing statements.

The Tenant shall timely pay any and all taxes levied or assessed against or upon the Tenant's equipment, fixtures, furniture, leasehold improvements, and personal property located in the Premises. Provided that the Tenant is not in default hereunder, the Tenant may, prior to the expiration date of the Lease, remove all fixtures and equipment, which it has placed in the Premises; provided, however, that the Tenant shall, at its sole cost and expense, repair all damages caused by such removal. If the Tenant does not remove its property from the Premises upon termination (for whatever cause) of this Lease, such property shall be deemed abandoned by the Tenant; and the EDA may dispose of the same in whatever manner the EDA may elect without any liability to the Tenant.

## 17. DEFAULT

a. The happening of any of the following enumerated events shall constitute a default for which the EDA, in addition to other rights or remedies it may have, shall have the immediate right of re-entry without service of notice or resort to legal process for (a) failure of the Tenant to pay any rent due hereunder within ten (10) days after written notice to the Tenant of such failure; (b) vacation of the Premises by the Tenant or advertising by the Tenant in any manner that would indicate or lead the public to believe that the Tenant was going out of business or intending to vacate the Premises, except for periods of time during the Pre-Rent Term that Tenant is performing renovations; (c) the filing by, on behalf of or against the Tenant, of any petition or pleading to declare the Tenant insolvent for which Tenant has not moved to dismiss same within thirty (30) days; (d) the inability of the Tenant to pay its debts or meet its obligations under the laws of the United States or any state, or a receiver of the property of the Tenant is appointed, or the levy of execution or other taking of the leasehold interest of the Tenant by process of law or otherwise in satisfaction of any judgment, debt or claim against the Tenant; or (e) failure of the Tenant to perform any of the other terms, conditions, or covenants of this Lease provided that the EDA has provided thirty (30) days written notice and Tenant has failed to correct same. In the event the time to correct cannot be reasonably completed within thirty (30) days, it shall not be considered a default provided that Tenant commences correction efforts within thirty (30) days and completes same within a reasonable time period as approved in writing by the EDA.

b. Should the EDA elect to re-enter and terminate the Tenant's use of the Premises as herein provided, or should the EDA take possession pursuant to legal proceedings or pursuant to any provisions under law, the EDA may either terminate this Lease or it may, from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rent and upon such other terms and conditions as the EDA, in its reasonable discretion may deem advisable. Upon each such re-letting, all rent received by the EDA from such re-letting shall be applied, first, to the payment of any indebtedness other than Rent due hereunder from the Tenant to the EDA; second, to the payment of any costs and expenses for such repossession and re-letting, including brokerage fees and attorney's fees and costs of alterations and/or repairs; third, to the payment of Rent due and unpaid hereunder; and fourth, the residue, if any, shall be held by the EDA and applied in payment of future Rent as the same may become due and payable hereunder. If the Premises is not re-let as aforesaid, or if the rent received for such re-letting during any month be less than that to be paid during the month by the Tenant to the EDA hereunder, the Tenant shall promptly pay the rental due hereunder or any such deficiency as the case may be to the EDA. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Premises by the EDA shall be construed as an election on its part to terminate this Lease unless a written notice of such election be given to the Tenant or unless the termination be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, the EDA may at any time thereafter elect to terminate this Lease for such previous breach. The Tenant shall pay to the EDA all expenditures incurred by them in any enforcement of the provisions of this Lease including reasonable fees of attorneys and others employed by the EDA.

c. Except as expressly herein provided to the contrary, any amount due to the EDA not paid when due shall bear simple interest at the legal judgment rate.

d. All of the foregoing remedies shall be in addition to any other rights the EDA may have at law or in equity, and waiver of one default shall not be deemed to be a waiver of any subsequent default.

e. Notwithstanding the foregoing, the EDA shall make reasonable efforts to mitigate damages.

f. In the event that the EDA fails to perform any duty under this Lease, it will make repairs within thirty (30) days of notice from Tenant or the EDA shall be in default. In the event the time to correct cannot be reasonably completed within thirty (30) days, it shall not be considered a default provided that the EDA commences correction efforts within thirty (30) days and completes same within a reasonable time period. In the event of a default by the EDA, the Tenant will be entitled to any and all relief under law, including, but not limited to the right to terminate the lease and/or the right to undertake such repairs and subtract the costs thereof from the next rental payment(s) due.

## **18. INDEMNIFICATION OF EDA**

a. The EDA shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Premises or the appurtenances thereto, or for any injury or damage to the Premises, or to any property, whether belonging to the Tenant or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part or portion of the Premises or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of any or all of the hatches, openings, installations, or hallways of any kind whatsoever, or from any kind of injury which may arise from any other cause whatsoever on the Premises, including defects in construction, latent or otherwise; provided, however, that the Tenant shall not be responsible for clean-up of any Hazardous Substances (as defined herein), to the extent that such Hazardous Substances were introduced to the Premises i) by the EDA; or ii) prior to the Commencement Date and not the result of actions by the Tenant or its agents, employees, or independent contractors. The provisions of this Lease permitting the EDA, after notice, to enter and inspect the Premises are made for the purpose of enabling the EDA to become informed as to whether the Tenant is complying with the agreements, terms, covenants and conditions thereof, but the EDA is under no obligation to perform such acts as the Tenant shall fail to perform.

b. The Tenant shall indemnify and hold the EDA harmless from and against any and all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including attorneys' fees, or injury to person or property arising out of, by reason of, or in account of:

1. Any material breach, violation or nonperformance of any covenant, condition, provision or agreement in this Lease set forth and contained on the part of the Tenant to be fulfilled, kept, observed, and performed; and
2. Claims of every kind or nature, arising out of the use and occupancy of the Premises by the Tenant, including without limitation, any damage to property occasioned or arising out of the use and occupancy thereof by the Tenant, or any injury to any person, including death resulting at any time therefrom, occurring in or about the Premises.

## **19. LIMITATION OF THE EDA'S OBLIGATION**

a. The EDA shall have no liability to the Tenant by reason of any inconvenience, annoyance, or injury to business arising from the EDA or its agents in their activities, making repairs, alterations, additions or improvements in or to a portion of the Premises except by reason of the negligence of the EDA or its agents.

b. Tenant shall have the exclusive right to conduct Brewery operations at the Premises and the EDA covenants and agrees that it will not rent or lease any other EDA property at the Marina to any other tenant for use as a brewery.

## **20. RESERVED RIGHTS**

The EDA explicitly reserves the following rights in addition to any other rights otherwise granted or reserved in this Lease:

a. To change the name or street address of the Premises without liability of the EDA to the Tenant.

b. To enter during the last ninety (90) days of the Term, provided the Tenant shall have removed all or substantially all of the Tenant's property from the Premises, for the purpose of altering, renovating, remodeling, repairing, or otherwise preparing the Premises for re-occupancy.

c. At any time or times the EDA, either voluntarily or pursuant to governmental requirement, may, at the EDA's own expense make repairs, alterations, or improvements in or to the Premises or any part thereof, and during operations, may close entrances, doors, corridors, or other facilities provided the Tenant shall have access to the Premises, unless there is an unforeseen emergency or the nature of the repair, alteration, or improvement makes such temporary closure before 5:00 p.m. necessary. The EDA shall make reasonable efforts to ensure that such repairs will not interfere with the Tenant's ability to conduct business, provide advance reasonable notice and to prosecute such repairs as quickly as possible so as to minimize any interference with the Tenant's quiet enjoyment.

d. To do anything that is appropriate or desirable to maintain, develop, market, or provide access to the Premises, including without limitation selling or developing all or portions of the Premises or to grant easements thereon, provided any such activity does not interfere with practices indicated in the Lease.

e. Relocate the Tenant into comparable space within the Marina at the EDA's sole option and expense. The EDA shall give the Tenant ninety (90) days notice prior to relocation and shall coordinate with the Tenant to avoid unreasonable disruption to the Brewery. The EDA shall not be liable for, and the Tenant expressly waives, any damages incidental to such relocation.

The EDA may exercise any or all of the foregoing rights hereby reserved by the EDA without being deemed guilty of an eviction or disturbance of the Tenant's use and possession and without being liable in any manner to the Tenant and without elimination or abatement of Rent, unless such interruption is prolonged and is a result of the EDA's negligence, or other compensation, and such acts shall have no effect upon this Lease.

## **21. MISCELLANEOUS**

a. The failure of the either party to enforce in any one or more instances any term, condition, rule, regulation or covenant as to which the other party shall be guilty of a breach or be in default, shall not be deemed to waive the right of the party to enforce the same or any subsequent breach or default notwithstanding that it had knowledge of such breach or default previously or at the time of the receipt of any rent or other sums by the EDA, whether the same be that originally reserved or that which may be payable under any of the covenants or agreements herein contained, or any portion thereof. The acceptance by the EDA of checks or cash from persons other than the Tenant shall in no event evidence consent of the EDA to any assignment or sub-lease by the

Tenant. No waiver or modification of neither this Lease nor any release or surrender of the same shall be claimed by either party unless such waiver or modification or release or surrender be in writing and signed by the other party.

b. Each provision hereof shall bind and inure to the benefit of the EDA and the Tenant and as the case may be: if the Tenant is an individual, the Tenant's legatees, executors, and administrators; the EDA's successors and assigns; if the Tenant is a corporation, its successors; and in the event that EDA consents to the assignments of this Lease notwithstanding the terms hereof, the Tenant's assigns.

c. The parties hereto agree that whenever the word "Tenant" and/or "party" is used herein it shall be construed to mean Tenants and/or parties, if there be more than one, and generally, feminine or neuter pronouns shall be substituted for those of the masculine form, and vice versa, and the plural is to be substituted for the singular number in any place herein in which the context shall require such substitution.

d. Paragraph headings for this Lease are used for convenience only, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provision to which they refer.

## **22. HOLDING OVER**

If the Tenant shall hold over after the Final Expiration Date or other termination of this Lease, such holding over shall not be deemed to be a renewal of this Lease but shall be deemed to create a tenancy-at-sufferance and by such holding over, the Tenant shall continue to be bound by all of the terms and conditions of this Lease, except that during such tenancy-at-sufferance, the Tenant shall pay to the EDA Rent at the rate equal to One Hundred Fifty Percent (150%) of that provided for in the foregoing Section 3. The increased Rent during such holding over is intended to compensate the EDA partially for losses, damages, and expenses, including frustrating and delaying the EDA's ability to secure a replacement tenant. If the EDA loses a prospective tenant or purchaser because the Tenant fails to vacate the Premises on the Expiration Date or any termination of the Lease after notice to do so, then the Tenant will be liable for such damages as the EDA can prove because of the Tenant's wrongful failure to vacate. The Tenant shall not be responsible for Holdover Rent if the Tenant renews this Lease.

## **23. SEVERABILITY**

The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way effect the validity of any other provision hereof.

## **24. JOINT VENTURE DISCLAIMER**

Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.

## **25. SUCCESSORS AND ASSIGNS**

All parties hereto agree that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and assigns.

## **26. APPLICABLE LAW, CONSTRUCTION, ATTORNEY'S FEES**

This Lease shall be construed in accordance with the laws of the Commonwealth of Virginia. If the EDA and Tenant are involved in any litigation regarding the performance of their obligations under this Lease, then each party shall be responsible for its own legal fees and expenses incurred by such party in connection with such litigation.

## **27. NOTICES**

Wherever in this Lease it shall be required or permitted that permission, notice, or demand be given or served by either party to this Lease to or on the other, such notices or demands shall be deemed given or served whether actually received or not when deposited in the United States Postal Service, postage pre-paid, certified or registered mail, addressed to parties hereto at the respective addresses set forth below or any other address that may be specified by the Parties.

### **Legal Notice Address for EDA:**

James City County EDA  
Attn: Secretary  
P.O. Box 8784  
Williamsburg, VA 23187-8784  
yesjcc@jamescitycountyva.gov

### **With Copy to:**

County Attorney  
P.O. Box 8784  
Williamsburg, VA 23187-8784

### **Tenant:**

Billsburg Brewery, Inc.  
Attn: Dave Baum  
205 Kingswood Drive  
Williamsburg, VA 23185  
dbaum23188@gmail.com

In each case when this Lease calls for an approval by the EDA, unless otherwise specified herein, such approval may be granted by the Chairman of the EDA or his designee and shall not require action by the EDA.

## **28. AUTHORITY OF PARTIES**

If the Tenant is a corporation, each individual executing this lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of said corporation or in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms.

## **29. PROPOSAL AND RFP; RELATIONSHIP TO LEASE AGREEMENT**

The Proposal and RFP shall be incorporated herein by reference. Any discrepancies between this Lease Agreement and the Proposal, and RFP shall be resolved in favor of the Lease Agreement, the RFP, and then the Proposal.



### **30. AMENDMENTS**

This Lease may be amended by signed, written agreement of the parties or their successors in interest.

### **31. FINAL UNDERSTANDING**

This Lease and all incorporated documents contains all agreements of the parties with respect to any matter mentioned herein.

**[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGES FOLLOW]**

**ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY**

By \_\_\_\_\_

Its:

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing Lease Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

Notary Registration No. \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
EDA Attorney

**BILLSBURG BREWERY, INC.**

By \_\_\_\_\_

Its:

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing Lease Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

Notary Registration No. \_\_\_\_\_

# JAMES CITY COUNTY ECONOMIC DEVELOPMENT AUTHORITY

## MARINA DEED OF LEASE

THIS AMENDED DEED OF LEASE, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the Economic Development Authority of James City County, Virginia a political subdivision of the Commonwealth of Virginia (the “EDA”), and Billsburg Brewery, Inc., a Virginia stock corporation (“Billsburg” or the “Tenant”) (each a “Party” and together, the “Parties”).

### WITNESSETH:

WHEREAS, the EDA has leased a portion of 2054 Jamestown Road, Williamsburg, Virginia 23185, further identified as James City County Tax Map Parcel Number 4640100012 (in its entirety referred to as the “Marina”) from the County of James City, Virginia (the “County”); and

WHEREAS, the EDA advertised a Request for Proposal, published December 12 and 16, 2015 (the “RFP”) to establish a commercial use at the Marina. The Tenant submitted a proposal dated January 8, 2016 (the “Proposal”). The RFP and Proposal are incorporated herein by reference.

WHEREAS, the EDA determined that the Proposal was responsive to the RFP and further determined that the Proposal was acceptable; and

WHEREAS, on August 2, 2016, the EDA leased the second story of an existing building located at the Marina to the Tenant (“Lease 1”), which lease contemplated the construction of a warehouse facility at the Marina to be occupied by the Tenant; and

WHEREAS, on December 9, 2016, the EDA leased a portion of the Marina to the Tenant, upon which a brewery building was constructed (“Lease 2”); and

WHEREAS, construction of the brewery building is complete and Billsburg is operational; and

WHEREAS, amendments to Lease 1 and Lease 2 are necessary in order to clarify terms and combine Lease 1 and Lease 2 into one comprehensive lease.

NOW, THEREFORE, in consideration of the below stated rent and other terms and conditions agreed to in this Amended Deed of Lease, which shall amend, supersede, and replace Lease 1 and Lease 2, hereinafter referred to as the “Lease,” the EDA does hereby lease to Tenant, and Tenant does hereby rent from the EDA, the following interests in the described lots, pieces, or parcels of land, together with all improvements thereon to-wit:

An exclusive leasehold interest in a portion of the Marina, being the area shown in red on the site plan titled, “JCC MARINA WAREHOUSE PREPARED FOR JAMES CITY COUNTY ECONOMIC DEVELOPMENT, JAMES CITY COUNTY, VIRGINIA,” which is attached to and made a part of this Lease as **Exhibit A**;

AND

A non-exclusive leasehold interest in the area shown in blue on Exhibit A (the "Common Area") (all together with the exclusive interest referred to as, the "Premises");

AND

A non-exclusive leasehold interest in a shared area that provides access and parking as shown in green on Exhibit A (the "Shared Area")

AND

All rights appurtenant to the Premises including, without limitation, stormwater drainage rights, and ingress and egress easements which are insurable under a leasehold title insurance policy.

TO HAVE AND TO HOLD said land and improvements thereon and the privileges and appurtenances thereunto belonging unto the Tenant, its permitted successors and assigns, for the term hereinafter provided, and upon all of the following terms and conditions, to which the parties mutually covenant and agree:

## **1. WAREHOUSE AND TAPROOM**

This Lease is executed by the Parties with the understanding that the EDA constructed a warehouse facility on the Premises consistent with County IFB # 17-11265 (with any reasonable alterations), generally shown as, "PREFABRICATED BUILDING" on Exhibit A (the "Building"). The Building shall be suitable for alteration by the Tenant at the Tenant's cost to satisfy its needs as set forth in the Proposal. Also included as part of this Lease is the second floor of the building generally shown as, "2 STORY BLOCK BUILDING 2ND FLOOR" on Exhibit A (the "Taproom") (the Building and the Taproom together referred to in this Lease as, the "Brewery Buildings").

## **2. TERM**

a. This Lease shall commence upon the signature of all parties. Rent payments as defined in Section 3 commenced upon September 1, 2017 (the "Rent Commencement Date").

b. The initial term of this Lease shall be for ten (10) years and shall end on the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date. Provided the Tenant is not in default, this Lease shall automatically renew for up to two (2) additional terms of five (5) years each (each a "Renewal Term"). The Tenant may give notice of intent to terminate this Lease upon written notice to the EDA at least one hundred and eighty (180) days prior to the expiration of the Initial Term or any Renewal Term. The Initial Term in conjunction with any Renewal Term of this Lease is referred to as the "Term." The expiration of this Lease at the end of the Term shall be referred to as the "Expiration Date." Subsequent renewals are permitted upon mutual written agreement between the parties.

### 3. RENT

During the first year of the Initial Term of this Lease, Tenant covenants to pay a base annual rental to the EDA equal to Sixty Thousand Dollars (\$60,000), which shall be payable in equal monthly installments in advance on the first day of each month in the amount of Five Thousand Dollars (\$5,000) ("Rent"). Rent shall increase by three percent (3%) for each of the first five (5) subsequent years of the Initial Term. Rent for each of the remaining four years of the Initial Term shall be equal to a base annual rent of Seventy Thousand Dollars (\$70,000), which shall be payable in equal monthly installments in advance on the first day of each month in the amount of Five Thousand Eight Hundred Thirty-three and 33/100 Dollars (\$5,833.33). Rent shall increase five percent (5%) for each Renewal Term. Rent shall be paid according to the following schedule:

YEAR	ANNUAL	MONTHLY
1	\$60,000.00	\$5,000.00
2	\$61,800.00	\$5,150.00
3	\$63,654.00	\$5,304.50
4	\$65,563.62	\$5,463.64
5	\$67,530.53	\$5,627.54
6	\$69,556.44	\$5,796.37
7	\$70,000.00	\$5,833.33
8	\$70,000.00	\$5,833.33
9	\$70,000.00	\$5,833.33
10	\$70,000.00	\$5,833.33
11	\$73,500.00	\$6,125.00
12	\$73,500.00	\$6,125.00
13	\$73,500.00	\$6,125.00
14	\$73,500.00	\$6,125.00
15	\$73,500.00	\$6,125.00
16	\$77,175.00	\$6,431.25
17	\$77,175.00	\$6,431.25
18	\$77,175.00	\$6,431.25
19	\$77,175.00	\$6,431.25
20	\$77,175.00	\$6,431.25

The rent for any terms subsequent to the Final Expiration Date of this Lease shall be as mutually agreed upon by the parties.

The Tenant shall pay Rent to the EDA, on or before the first day of each calendar month during the Term, without previous demand or notice therefore by the EDA and without set-off or deduction. In the event that Rent initially becomes due on a day other than the first of the calendar month, that payment shall be prorated and the subsequent Rent payment shall be due on the first of the following month. Notwithstanding anything contained herein to the contrary, the Tenant's obligation to pay Rent under this Lease is completely separate and independent from any of the EDA's obligations under this Lease. For each monthly Rent payment the EDA receives after the tenth (10th) day of the month, the EDA shall be entitled to, in addition to all other remedies provided in this Lease, a late charge in the amount of five percent (5%) of all Rent due for such month. Rent shall be paid to the following:

#### **4. TAXES AND ASSESSMENTS**

The Tenant shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during the term hereof. The Tenant shall be responsible for the real estate taxes assessed on the Premises. In the event any or all of the taxes for which Tenant is responsible shall be assessed and taxed to the EDA, the Tenant shall pay to the EDA its share of such taxes within ten (10) days after delivery to the Tenant by the EDA of a statement in writing setting forth the amount of such taxes applicable to the Tenant.

#### **5. USE OF PREMISES**

a. The Tenant shall be permitted to use the Premises for the uses described in the Proposal (the "Brewery"), which includes any uses permissible under ABC laws for a brewery, and those that may be approved by a majority vote of the EDA, subject to the following provisions:

- i. The Tenant must obtain the EDA's permission prior to any proposed change in the size or scope of the Brewery or prior to establishing any new use at the Premises.
- ii. The Tenant shall never make any use of the Premises which is in violation of any federal, state, or local laws, rules, or regulations, whether now existing or hereafter enacted.
- iii. The Tenant may not make any use that is or may be a nuisance or trespass or makes such insurance unavailable to the EDA on the Premises.
- iv. The Tenant shall not make exclusive use of the Common Area or Shared Area without prior written agreement of the EDA.

b. The EDA shall have the option to reserve and use the Premises without cost up to three (3) times per year subject to the following conditions:

- i. No such use shall take place on a day that the Brewery is not in operation without prior written agreement by the Tenant.
- ii. Use of the Premises shall be requested by the EDA at least sixty (60) days prior to the date of use.
- iii. All good and services provided by the Tenant shall be agreed on and compensated independent of this Lease.

c. The EDA shall have use of the Common Area as the EDA sees fit. Nothing in this Lease shall restrict the EDA's use of the Common Area.

#### **6. CONDITION OF THE PREMISES**

a. The Tenant's occupancy and use of the Premises shall be the Tenant's representation to the EDA that the Tenant has examined and inspected the same, finds the Premises to be satisfactory for the Tenant's intended use, and constitutes the Tenant's acceptance of the Premises "AS IS." The Tenant shall deliver at the end of this Lease each and every part of the Premises in good repair and condition, ordinary wear and tear and damage by insured casualty excepted. The delivery of a key or other such tender of possession of the Premises to the EDA or to an employee of the EDA prior to the expiration of the Term shall not operate as a termination of this Lease or a surrender of the Premises except upon written notice by the EDA in accordance with the terms

hereof. The Tenant shall: (i) keep the Premises in good order; (ii) make repairs and replacements to the Premises as needed because of the Tenant's or its employees' or invitees' use, misuse, or primary negligence; and (iii) not commit waste.

b. Upon termination of this Lease or vacation of the Premises by the Tenant, the Tenant shall restore the Premises to the same condition as existed at the Rent Commencement Date at Tenant's sole expense; ordinary wear and tear, alterations and improvements approved pursuant to Section 10 of this Lease, and damage by insured casualty only excepted. The EDA, however, may elect to require the Tenant to leave non-approved alterations or improvements performed by or for the Tenant unless, at the time of such alterations, the EDA agreed in writing that such alterations could be removed upon the expiration or termination of this Lease, or upon Tenant's vacation of the Premises.

## **7. SIGNS**

The Tenant may not erect, install, or display any sign or other advertising material on or about the Premises without the prior written consent of the EDA, or in conflict with any state or local laws. The Tenant shall be solely responsible for the cost to install and maintain any signs erected on the Premises.

## **8. ASSIGNMENT, SUBLETTING AND MORTGAGING**

The Tenant shall not assign this Lease or sublet or place any mortgage upon the Premises, in whole or in part, without the EDA's prior written consent. If consent to assign or sublease is obtained, no such assignment or sublease shall in any way release or relieve the Tenant from any of its covenants or undertakings contained in this Lease, and in all cases under this paragraph, the Tenant shall remain liable on this Lease during the Term. The Tenant's request for consent to any subletting or assignment of this Lease shall be accompanied by a written statement setting forth the details of the proposed sublease or assignment and any other information the EDA deems relevant. The EDA shall have the right to (a) withhold consent; (b) grant consent; or (c) terminate this Lease as of the effective date of such sublease or assignment. After ten (10) days written notice to the Tenant of the EDA's intention to terminate, the Tenant may withdraw its request for consent and this Lease shall continue with its terms. In the event the Tenant does not withdraw its request for consent to sublet or assign, the EDA may elect to enter into a direct lease with the proposed assignee or subtenant. The Tenant shall be liable for reasonable expenses incurred by the EDA in connection with an assignment, subletting, or mortgage of the Premises.

## **9. UTILITIES**

a. Until such time as Section 9(c) takes effect, electric, water, and sewer services shall be in the name of the EDA or the County, and the Tenant shall reimburse the EDA or the County for all charges within ten (10) days of the EDA or the County giving notice that the same have become due. All other utility services shall be contracted for directly by the Tenant. The EDA and the County shall not be liable for any interruption or failure in the supply of any utility to the Premises and no abatement of Rent shall be allowed to the Tenant as a result thereof, unless such interruption is prolonged and is a result of the EDA's or the County's negligence, nor shall the Lease or any of the EDA's or the County's obligations be in any way affected thereby. The Tenant shall be responsible for the extension or expansion of all utilities necessary to serve any improvements made to the Premises pursuant to Section 10 of this Lease.

b. All utility charges incurred by the EDA or the County and attributable to the Brewery prior to this Amendment shall be paid by the Tenant on or before November 1, 2018 and shall be



charged to the Tenant as Additional Rent. Additional Rent for past utilities shall be One Thousand Six Hundred Seventy and 71/100 dollars (\$1,670.71) per month.

c. Upon the occurrence of (i) Major Improvement to the Taproom by the Tenant; (ii) Major Improvement of the 2 Story Block Building by the EDA or the County; or (iii) relocation of the Tenant pursuant to Section 20, the Tenant shall, at its expense, separately meter all utilities serving the Building and the Taproom (as currently located or relocated) and separately contract for such services.

## **10. IMPROVEMENTS, REPAIRS, ALTERATIONS, AND MAINTENANCE**

a. All maintenance, upkeep, and repair ("Maintenance") of the Premises shall be performed or contracted for by the Tenant at its sole expense, excepting structural repairs of the Building covered by any warranty held by the EDA. The Tenant shall not be reimbursed for any Maintenance unless otherwise agreed to in writing by the EDA. The EDA shall immediately notify the Tenant in writing of any observed site deficiencies. The Tenant shall have thirty (30) calendar days from the day of receipt of written notification to correct the deficiency. E-mail shall constitute "written notification." If the deficiency is not corrected within this time period, the EDA may procure the required goods or services from other sources and hold the Tenant responsible for any resulting additional purchase, staff, and administrative costs limited to 10% of the repairs made by the EDA. This remedy shall be in addition to other remedies which the EDA may have.

b. The EDA shall participate in any repair to the extent that such repair is covered by a warranty held on the Building. The EDA covenants and agrees that it shall comply with the maintenance obligations of its lease with the County. Subject to the terms set forth in the lease between the County and the EDA, the County shall be responsible for the repair or replacement of all aspects of the Taproom, excepting only the electric heat pump/air conditioning unit, which the Tenant accepts "AS IS." Neither the EDA nor the County shall repair or replace the existing electric heat pump/air conditioning unit in the Taproom. Neither the EDA nor the County shall be liable (and shall assess the costs thereof to the Tenant) when any repair or replacement of the Premises is made necessary by the negligent or willful acts or omission of the Tenant, its agents, invitees, or employees. The EDA shall not be liable for or have any obligation to repair or replace any improvements made to the Premises by the Tenant.

c. The Tenant may make improvements to the Brewery Buildings using its own resources. The Tenant may make non-structural alterations, additions, or improvements to the Brewery Buildings not exceeding Five Thousand Dollars (\$5,000) in cost ("Minor Improvement") without the prior written consent of the EDA. Any external Minor Improvement shall be a neutral or muted earth tone color that complements the Marina. Other than routine maintenance, the Tenant shall not make any alterations of, additions to, or changes to the Brewery Buildings that (1) exceed five thousand dollars (\$5,000) in cost, or (2) are structural ("Major Improvement") without the prior written consent of the EDA, such consent not to be unreasonably withheld. Minor Improvements that, at the EDA's sole discretion, aggregate to a Major Improvement, shall be treated as a Major Improvement under this Lease. All such Minor Improvements and Major Improvements (collectively, "Improvements") shall meet local, state, and federal requirements. The Tenant shall perform all work required to improve the Brewery Buildings to a finished condition ready for the conduct of the Tenant's business. The Tenant shall provide construction drawings to the EDA for each proposed Improvement and shall provide the EDA with a cost estimate for each. The EDA shall consider each such proposed Major Improvement and may, at its sole discretion, approve, conditionally approve, or deny each such proposed Major Improvement or any portion thereof. Upon completion of any Improvement, the Tenant shall provide the EDA with a set of as-built construction plans. Equipment and machinery shall not be deemed Improvements under this Lease.

d. The Tenant may, with the prior written consent of the EDA, make improvements to the landscaping on the Premises, such as, but not limited to, the installation of sod, mulch, plants, trees, benches, water features, etc. ("Landscape Improvements"). Any request for Landscape Improvements shall be submitted to the EDA in writing along with plans illustrating the location and type of plantings and improvements proposed. Such plans shall be submitted by the EDA to the County for review and approval by the appropriate County departments. The EDA shall, in writing, approve, conditionally approve, or deny the Landscape Improvements within forty-five (45) days of receipt of the request and illustrative plans.

e. The Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of the Tenant. Should any claim of lien or other lien be filed against the Premises by reason of any act or omission of the Tenant or any of the Tenant's agents, employees, contractors, or representatives, then the Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within forty-five (45) days after the filing thereof. The EDA shall give the Tenant notice of any lien filed against the Premises for which the EDA has actual notice. Should the Tenant fail to discharge such lien within such forty-five (45) day period, then the EDA may discharge the same, in which event the Tenant shall reimburse the EDA, on demand, the amount of the lien or the amount of the bond, if greater, plus all reasonable administrative costs incurred by the EDA in connection therewith. The remedies provided herein shall be in addition to the other remedies available to the EDA under this Lease or otherwise. The Tenant shall have no power to do any act or make any contract that may create or be the foundation of any lien, mortgage, or other encumbrance upon the reversionary or other estate of the EDA, or any interest of the EDA in the Premises. NO CONSTRUCTION LIENS OR OTHER LIENS FOR ANY LABOR, SERVICES, OR MATERIALS FURNISHED TO THE PREMISES SHALL ATTACH TO OR AFFECT THE INTEREST OF EDA IN AND TO THE PREMISES.

f. Upon expiration or earlier termination of this Lease, the Tenant's leasehold interest in the Premises shall terminate and title to the Improvements shall automatically pass to, vest, belong to, and become the property of the EDA. The Tenant shall, if the EDA shall deem it appropriate, execute any further documents to confirm this transfer of title to the EDA with cost of charge to the EDA. The Tenant shall be responsible for the removal of its personal property, upon expiration or earlier termination of this Lease, provided that the Tenant shall be responsible for the cost of repair of any damage caused by the removal. The EDA and Tenant shall negotiate in good faith with regard to the removal of equipment and machinery and/or the sale of same to the EDA.

g. The Tenant shall, on the last day of the term, or upon the sooner termination of this Lease, peaceably and quietly surrender the Premises and equipment to the EDA, broom-clean, including all Improvements, alterations, rebuildings, replacements, changes, or additions placed by the Tenant thereon, in as good condition and repair as the same were in at the commencement of the original term, normal wear and tear and damage by insured casualty excepted.

## **11. EMINENT DOMAIN**

If all of the Premises, or such part thereof as will make the same unusable for the purposes contemplated by this Lease, be taken under the power of eminent domain (or a conveyance in lieu thereof), then this Lease shall terminate as of the date possession is taken by the condemnor, and Rent shall be adjusted between the EDA and the Tenant as of such date. If only a portion of the Premises is taken and the Tenant can continue use of the remainder, then this Lease will not terminate, but Rent shall abate in a just and proportionate amount to the loss of use occasioned by the taking.

The EDA shall be entitled to the entire proceeds of any condemnation award; provided, however, that Tenant may pursue a separate claim for the book value less depreciation of Improvements placed on the Premises by Tenant at its own expense, as shown on Tenant's most recent federal income tax return or as certified as a book value amount by Tenant, adjusted for subsequent additions and depreciation to the date of such condemnation, plus amounts, to compensate Tenant for expenses special to Tenant provided the foregoing does not reduce the EDA's award.

## **12. ACCESS TO PREMISES**

a. The EDA shall have the right, upon twenty four (24) hours prior notice to the Tenant (except in the case of an emergency, in which event the EDA shall have the right to enter the Premises as the EDA reasonably deems necessary), either itself or through its authorized agents, to enter the Premises (i) for the purposes of inspection, (ii) to make repairs, alterations or changes as EDA deems necessary after the Tenant has neglected its obligations under this Lease, and (iii) to show the Premises to prospective lessees, mortgagees, and/or purchasers. The EDA shall have the right, either itself or through its authorized agents, to place signs in conspicuous places about the Premises and to otherwise advertise the Premises for sale or rent, and to enter the Premises at all reasonable times for inspection to show prospective lessees, mortgagees, and/or purchasers if within one hundred eighty (180) days prior to the Expiration Date as extended by any exercised option for a Renewal Term.

b. The Tenant, its agents, employees, invitees, and guests, shall have the right of ingress and egress to the Common Area, Shared Area, and public areas of the Marina, provided the EDA and the County may regulate and control such access, or as needed for making repairs and alterations.

c. The EDA shall furnish the Tenant with a key to the Building and the Taproom. All keys to the Building and Taproom shall remain the property of the EDA. No additional locks shall be allowed on any door of the Building or the Taproom without the EDA's written permission, which shall not be unreasonably withheld. Notwithstanding the foregoing, the Tenant may install locks on the doors of individual offices within the Building or the Taproom, provided that the Tenant shall provide a copy of any such keys to the EDA. The Tenant shall supply the EDA with a copy of any keys necessary to access the Building and the Taproom. Upon termination of this Lease, the Tenant shall surrender to the EDA all keys to the Building and the Taproom, and give to the EDA the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, in the Building and the Taproom.

d. During the Brewery's normal operating hours, the Tenant shall keep the bathrooms located in the Taproom open for use by those using the County's park facilities at the Marina.

## **13. HAZARDOUS SUBSTANCE**

a. The Tenant shall not knowingly cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Premises by the Tenant, the Tenant's agents, employees, or contractors without the prior express written consent of the EDA.

b. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive or corrosive and that is or becomes regulated by any local government, the Commonwealth of Virginia or the United States Government. "Hazardous Substance" also includes any and all materials or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local law or becomes

regulated by any federal, state or local authority. "Hazardous Substance" includes, but is not restricted to, asbestos, polychlorinated biphenyl's (PCB's), solvents, printing inks, pesticides, solvents, and leads. "Hazardous Substance" excludes petroleum products when said petroleum products are stored and dispensed in accordance with all federal, state, and local laws and regulations. Notwithstanding the foregoing, ordinary items such as propane, paint, cleaning supplies, etc. shall not be deemed Hazardous Substances.

c. The Tenant shall provide the EDA, in a timely manner, a Safety Data Sheet ("SDS") upon the EDA's request. Said SDS shall describe the chemical properties of any hazardous substances which may be used, stored, generated, or disposed of on or in the Premises.

## **14. INSURANCE**

a. At all times during the Lease, at its own cost and expense, the Tenant shall keep or cause to be kept on all Improvements, alterations, renovations, replacements, substitutions, changes, equipment, fixtures, motors, and machinery owned or leased by the Tenant and installed in or used in connection with the Premises, insurance against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered), flood and such other hazards, casualties, risks, and contingencies now covered by or that may hereafter be considered, as included within the standard form extended coverage endorsement, in an amount equal to the actual replacement cost (the "Full Insurable Value") and sufficient so that no co-insurance penalty shall be invoked in case of loss. Such Full Insurable Value shall be determined from time to time at the request of the EDA (no more often than once every year) but at the expense of the Tenant by the fire insurance company carrying the highest amount of fire insurance on the Premises or its agent, or by an appraiser selected by the Tenant that is experienced in insurance appraisals who is approved in writing by the EDA which approval shall not be unreasonably withheld. The failure of the EDA to request such appraisal shall not release the Tenant from its obligations hereunder.

b. At all times during the Lease, at its own cost and expense, the Tenant shall provide and keep in force comprehensive general liability insurance in standard form, protecting the Tenant and naming the EDA as an additional insured, on a primary basis with no participation required by the EDA's liability policy, against personal injury, including without limitation, products and completed operations, personal and advertising injury, bodily injury, death, or property damage and contractual liability on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. If the Tenant maintains broader coverage and/or higher limits than the minimums shown above, the EDA requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the EDA. The EDA reserves the right to amend these limits from time to time during the course of the Lease. All such policies shall cover the entire Premises and any improvements thereon, including parking, common areas, means of access, and roadways therein, and streets and sidewalks adjacent thereto.

c. At all times during the Lease when the Tenant is engaged in the construction or reconstruction of any Improvement, or repairs thereof, at its own cost and expense, the Tenant shall provide and keep in force for the benefit of the EDA and the Tenant, "all risk" builders risk insurance on the Premises and all Improvement(s) under construction naming the EDA as a loss payee on the policy.

d. At all times during the Lease, at its own cost and expense, the Tenant shall purchase and keep in force worker's compensation insurance and employer's liability insurance for all employees of the Tenant in strict compliance with the laws of the Commonwealth of Virginia in

the following minimum amounts: Coverage A – Statutory, Coverage B – \$100,000/\$100,000/\$500,000.

e. All of the policies of insurance required by this Lease shall be i) in form and substance as reasonably approved by the EDA; ii) underwritten only by companies licensed in the Commonwealth of Virginia which have a then-current Alfred M. Best Company, Inc. (or if it no longer exists, a then comparable rating service) general policyholder's rating of A or better (or the equivalent thereof) and a financial rating of VII or better (or the equivalent thereof); iii) accompanied by evidence of payment of premiums thereon to the insurance companies or their agents, including evidence of current annual payment, if on an installment payment basis; iv) contain standard waiver of subrogation clauses; and v) provide that they may not be canceled by the insurer for non-payment of premiums or otherwise until at least thirty (30) days after a receipt of the proposed cancellation, and in any event, shall not be invalidated, as to the interests of the Tenant therein, by any act, omission or neglect of the Tenant (other than nonpayment of premiums), which might otherwise result in a forfeiture or suspension of such insurance, including without limitation, the occupation or use of the Premises for purposes more hazardous than those permitted by the terms of the policy, any foreclosure of any leasehold deed of trust and any change in title or ownership of the Premises. If requested by the EDA, copies of all insurance policies required by this Lease shall be delivered by the Tenant to the EDA. All insurance policies shall be renewed by the Tenant and proof of such renewals, including appropriate endorsement page(s), accompanied by evidence of the payments of the premiums thereon to the insurance companies or their agents, shall be delivered to the EDA, at least twenty (20) days prior to their respective expiration dates. All self-insured retentions, deductibles and aggregate limits on any required insurance must be disclosed and approved by the EDA.

f. The EDA and the Tenant mutually release and discharge each other (as well as the officers, directors, partners, agents and employees of each other) from responsibility and liability (by way of subrogation or otherwise) for loss or damage to any building, structure, equipment, or other real or personal property of the other, or any resulting loss of income or business, that may arise from a fire or other casualty or is otherwise covered by insurance. The above releases also shall apply to any third party, including any insurance company, claiming through or under a party as a result of a right of subrogation. All casualty insurance policies required to be maintained under this Lease shall contain "waiver of subrogation" clauses to carry out these release provisions.

## **15. DAMAGE TO PREMISES**

If, by reason of such fire or other casualty, the Premises is rendered wholly untenable, the Rent and other charges payable by the Tenant shall be fully abated, or if only partially damaged, such rent and other charges shall be abated proportionately as to that portion of the Premises rendered untenable, in either event (unless the Lease is terminated, as aforesaid) from the date of such casualty until (i) occupancy of the Premises by Tenant; (ii) the date the EDA has the Premises ready for occupancy by the Tenant provided the Tenant has been given at least fourteen (14) days' notice of same, or (iii) the date the EDA could have had the Premises ready had there been no delays attributable to the Tenant. The Tenant shall continue the operation of the Tenant's business in the Premises or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management. However, if such damages or other casualty shall be caused by the negligence or other wrongful conduct of the Tenant or of the Tenant's subtenants, licensees, contractors, or invitees, or their respective agents or employees, there shall be no abatement of Rent or other charges. Notwithstanding the foregoing, the Tenant may elect to obtain loss of rents insurance coverage covering a period of no less than twelve (12) months, in which event the preceding sentence stating that there shall be no abatement of rent or other charges shall not be applicable. If the Tenant elects to obtain such insurance

coverage, the policy must be issued by an insurance carrier reasonably acceptable to the EDA, and the Tenant shall deliver to the EDA a certificate of insurance evidencing the required insurance coverage, which shall be renewed and a renewal certificate provided to the EDA no later than thirty (30) days prior to the expiration date of such insurance policy. Except for the abatement of the Rent and other charges hereinabove set forth, the Tenant shall not be entitled to, and hereby waives all claims against the EDA for any compensation or damage for loss of use of the whole or any part of the Premises and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. Notwithstanding the foregoing provisions, if damage or loss occurs to the Premises during the final two (2) years of the Initial Term or any Renewal Term, where the costs to repair such damage or loss exceeds twenty-five percent (25%) of the replacement cost of the Premises, then in that event the EDA and/or the Tenant may, at its respective election, terminate this Lease upon written notice to the other party within sixty (60) days of the date such damage or loss occurs. In the event the EDA is repairing the Premises, it shall promptly undertake such repairs and follow them through to a conclusion.

## **16. LANDLORD'S LIEN, PROPERTY OF TENANT**

All trade fixtures, personal property, equipment, inventory and merchandise belonging to the Tenant which are, or may be, put into the Building during the Term, whether exempt or not from sale under execution and attachment under the laws of Virginia, shall at all times be subject to, and the Tenant hereby grants to the EDA, a first priority lien and security interest in favor of the EDA, for the purpose of securing all Rent, additional rent, or other sums which may become due to the EDA from the Tenant under this Lease. For the purposes of the Tenant receiving financing, the EDA will, upon request by the Tenant, subordinate its lien priority to a Purchase Money Security Interest. All trade fixtures, personal property, equipment, inventory and merchandise belonging to the Tenant which are, or may be, put into the Taproom during the Term, whether exempt or not from sale under execution and attachment under the laws of Virginia, shall at all times be subject to, and the Tenant hereby grants to the EDA, a second priority lien and security interest in favor of the EDA, for the purpose of securing all Rent, additional rent, or other sums which may become due to the EDA from the Tenant under this Lease.

Upon default or breach of any covenants of this Lease, the EDA shall have all remedies available under the Uniform Commercial Code enacted in Virginia including, but not limited to, the right to take possession of the above mentioned property and dispose of it by sale in a commercially reasonable manner. The Tenant hereby agrees to execute financing statements and continuation statements upon a request to do so by the EDA for the purpose of recording same in the appropriate public records in order to perfect the EDA's security interest, serving notice to third parties of the security interest herein granted. Upon the failure of the Tenant to so execute upon request, the Tenant does hereby appoint the James City County Attorney's Office as Tenant's attorney in fact for said purpose. The Tenant agrees to pay, as additional rent, all filing fees, taxes and other costs and expenses incurred by the EDA in recording such financing statements.

The Tenant shall timely pay any and all taxes levied or assessed against or upon the Tenant's equipment, fixtures, furniture, leasehold improvements, and personal property located in the Premises. Provided that the Tenant is not in default hereunder, the Tenant may, prior to the expiration date of the Lease, remove all fixtures and equipment, which it has placed in the Premises; provided, however, that the Tenant shall, at its sole cost and expense, repair all damages caused by such removal. If the Tenant does not remove its property from the Premises upon termination (for whatever cause) of this Lease, such property shall be deemed abandoned by the Tenant; and the EDA may dispose of the same in whatever manner the EDA may elect without any liability to the Tenant.

## 17. DEFAULT

a. The happening of any of the following enumerated events shall constitute a default for which the EDA, in addition to other rights or remedies it may have, shall have the immediate right of re-entry without service of notice or resort to legal process for (a) failure of the Tenant to pay any rent due hereunder within ten (10) days after written notice to the Tenant of such failure; (b) vacation of the Premises by the Tenant or advertising by the Tenant in any manner that would indicate or lead the public to believe that the Tenant was going out of business or intending to vacate the Premises, except for periods of time during the Pre-Rent Term that Tenant is performing renovations; (c) the filing by, on behalf of or against the Tenant, of any petition or pleading to declare the Tenant insolvent for which Tenant has not moved to dismiss same within thirty (30) days; (d) the inability of the Tenant to pay its debts or meet its obligations under the laws of the United States or any state, or a receiver of the property of the Tenant is appointed, or the levy of execution or other taking of the leasehold interest of the Tenant by process of law or otherwise in satisfaction of any judgment, debt or claim against the Tenant; or (e) failure of the Tenant to perform any of the other terms, conditions, or covenants of this Lease provided that the EDA has provided thirty (30) days written notice and Tenant has failed to correct same. In the event the time to correct cannot be reasonably completed within thirty (30) days, it shall not be considered a default provided that Tenant commences correction efforts within thirty (30) days and completes same within a reasonable time period as approved in writing by the EDA.

b. Should the EDA elect to re-enter and terminate the Tenant's use of the Premises as herein provided, or should the EDA take possession pursuant to legal proceedings or pursuant to any provisions under law, the EDA may either terminate this Lease or it may, from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rent and upon such other terms and conditions as the EDA, in its reasonable discretion may deem advisable. Upon each such re-letting, all rent received by the EDA from such re-letting shall be applied, first, to the payment of any indebtedness other than Rent due hereunder from the Tenant to the EDA; second, to the payment of any costs and expenses for such repossession and re-letting, including brokerage fees and attorney's fees and costs of alterations and/or repairs; third, to the payment of Rent due and unpaid hereunder; and fourth, the residue, if any, shall be held by the EDA and applied in payment of future Rent as the same may become due and payable hereunder. If the Premises is not re-let as aforesaid, or if the rent received for such re-letting during any month be less than that to be paid during the month by the Tenant to the EDA hereunder, the Tenant shall promptly pay the rental due hereunder or any such deficiency as the case may be to the EDA. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Premises by the EDA shall be construed as an election on its part to terminate this Lease unless a written notice of such election be given to the Tenant or unless the termination be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, the EDA may at any time thereafter elect to terminate this Lease for such previous breach. The Tenant shall pay to the EDA all expenditures incurred by them in any enforcement of the provisions of this Lease including reasonable fees of attorneys and others employed by the EDA.

c. Except as expressly herein provided to the contrary, any amount due to the EDA not paid when due shall bear simple interest at the legal judgment rate.

d. All of the foregoing remedies shall be in addition to any other rights the EDA may have at law or in equity, and waiver of one default shall not be deemed to be a waiver of any subsequent default.

e. Notwithstanding the foregoing, the EDA shall make reasonable efforts to mitigate damages.

f. In the event that the EDA fails to perform any duty under this Lease, it will make repairs within thirty (30) days of notice from Tenant or the EDA shall be in default. In the event the time to correct cannot be reasonably completed within thirty (30) days, it shall not be considered a default provided that the EDA commences correction efforts within thirty (30) days and completes same within a reasonable time period. In the event of a default by the EDA, the Tenant will be entitled to any and all relief under law, including, but not limited to the right to terminate the lease and/or the right to undertake such repairs and subtract the costs thereof from the next rental payment(s) due.

## **18. INDEMNIFICATION OF EDA**

a. The EDA shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Premises or the appurtenances thereto, or for any injury or damage to the Premises, or to any property, whether belonging to the Tenant or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part or portion of the Premises or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of any or all of the hatches, openings, installations, or hallways of any kind whatsoever, or from any kind of injury which may arise from any other cause whatsoever on the Premises, including defects in construction, latent or otherwise; provided, however, that the Tenant shall not be responsible for clean-up of any Hazardous Substances (as defined herein), to the extent that such Hazardous Substances were introduced to the Premises i) by the EDA; or ii) prior to the Commencement Date and not the result of actions by the Tenant or its agents, employees, or independent contractors. The provisions of this Lease permitting the EDA, after notice, to enter and inspect the Premises are made for the purpose of enabling the EDA to become informed as to whether the Tenant is complying with the agreements, terms, covenants and conditions thereof, but the EDA is under no obligation to perform such acts as the Tenant shall fail to perform.

b. The Tenant shall indemnify and hold the EDA harmless from and against any and all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including attorneys' fees, or injury to person or property arising out of, by reason of, or in account of:

1. Any material breach, violation or nonperformance of any covenant, condition, provision or agreement in this Lease set forth and contained on the part of the Tenant to be fulfilled, kept, observed, and performed; and
2. Claims of every kind or nature, arising out of the use and occupancy of the Premises by the Tenant, including without limitation, any damage to property occasioned or arising out of the use and occupancy thereof by the Tenant, or any injury to any person, including death resulting at any time therefrom, occurring in or about the Premises.

## **19. LIMITATION OF THE EDA'S OBLIGATION**

a. The EDA shall have no liability to the Tenant by reason of any inconvenience, annoyance, or injury to business arising from the EDA or its agents in their activities, making repairs, alterations, additions or improvements in or to a portion of the Premises except by reason of the negligence of the EDA or its agents.



b. Tenant shall have the exclusive right to conduct Brewery operations at the Premises and the EDA covenants and agrees that it will not rent or lease any other EDA property at the Marina to any other tenant for use as a brewery.

## **20. RESERVED RIGHTS**

The EDA explicitly reserves the following rights in addition to any other rights otherwise granted or reserved in this Lease:

a. To change the name or street address of the Premises without liability of the EDA to the Tenant.

b. To enter during the last ninety (90) days of the Term, provided the Tenant shall have removed all or substantially all of the Tenant's property from the Premises, for the purpose of altering, renovating, remodeling, repairing, or otherwise preparing the Premises for re-occupancy.

c. At any time or times the EDA, either voluntarily or pursuant to governmental requirement, may, at the EDA's own expense make repairs, alterations, or improvements in or to the Premises or any part thereof, and during operations, may close entrances, doors, corridors, or other facilities provided the Tenant shall have access to the Premises, unless there is an unforeseen emergency or the nature of the repair, alteration, or improvement makes such temporary closure before 5:00 p.m. necessary. The EDA shall make reasonable efforts to ensure that such repairs will not interfere with the Tenant's ability to conduct business, provide advance reasonable notice and to prosecute such repairs as quickly as possible so as to minimize any interference with the Tenant's quiet enjoyment.

d. To do anything that is appropriate or desirable to maintain, develop, market, or provide access to the Premises, including without limitation selling or developing all or portions of the Premises or to grant easements thereon, provided any such activity does not interfere with practices indicated in the Lease.

e. Relocate the Tenant into comparable space within the Marina at the EDA's sole option and expense. The EDA shall give the Tenant ninety (90) days notice prior to relocation and shall coordinate with the Tenant to avoid unreasonable disruption to the Brewery. The EDA shall not be liable for, and the Tenant expressly waives, any damages incidental to such relocation.

The EDA may exercise any or all of the foregoing rights hereby reserved by the EDA without being deemed guilty of an eviction or disturbance of the Tenant's use and possession and without being liable in any manner to the Tenant and without elimination or abatement of Rent, unless such interruption is prolonged and is a result of the EDA's negligence, or other compensation, and such acts shall have no effect upon this Lease.

## **21. MISCELLANEOUS**

a. The failure of the either party to enforce in any one or more instances any term, condition, rule, regulation or covenant as to which the other party shall be guilty of a breach or be in default, shall not be deemed to waive the right of the party to enforce the same or any subsequent breach or default notwithstanding that it had knowledge of such breach or default previously or at the time of the receipt of any rent or other sums by the EDA, whether the same be that originally reserved or that which may be payable under any of the covenants or agreements herein contained, or any portion thereof. The acceptance by the EDA of checks or cash from persons other than the Tenant shall in no event evidence consent of the EDA to any assignment or sub-lease by the

Tenant. No waiver or modification of neither this Lease nor any release or surrender of the same shall be claimed by either party unless such waiver or modification or release or surrender be in writing and signed by the other party.

b. Each provision hereof shall bind and inure to the benefit of the EDA and the Tenant and as the case may be: if the Tenant is an individual, the Tenant's legatees, executors, and administrators; the EDA's successors and assigns; if the Tenant is a corporation, its successors; and in the event that EDA consents to the assignments of this Lease notwithstanding the terms hereof, the Tenant's assigns.

c. The parties hereto agree that whenever the word "Tenant" and/or "party" is used herein it shall be construed to mean Tenants and/or parties, if there be more than one, and generally, feminine or neuter pronouns shall be substituted for those of the masculine form, and vice versa, and the plural is to be substituted for the singular number in any place herein in which the context shall require such substitution.

d. Paragraph headings for this Lease are used for convenience only, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provision to which they refer.

## **22. HOLDING OVER**

If the Tenant shall hold over after the Final Expiration Date or other termination of this Lease, such holding over shall not be deemed to be a renewal of this Lease but shall be deemed to create a tenancy-at-sufferance and by such holding over, the Tenant shall continue to be bound by all of the terms and conditions of this Lease, except that during such tenancy-at-sufferance, the Tenant shall pay to the EDA Rent at the rate equal to One Hundred Fifty Percent (150%) of that provided for in the foregoing Section 3. The increased Rent during such holding over is intended to compensate the EDA partially for losses, damages, and expenses, including frustrating and delaying the EDA's ability to secure a replacement tenant. If the EDA loses a prospective tenant or purchaser because the Tenant fails to vacate the Premises on the Expiration Date or any termination of the Lease after notice to do so, then the Tenant will be liable for such damages as the EDA can prove because of the Tenant's wrongful failure to vacate. The Tenant shall not be responsible for Holdover Rent if the Tenant renews this Lease.

## **23. SEVERABILITY**

The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way effect the validity of any other provision hereof.

## **24. JOINT VENTURE DISCLAIMER**

Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.

## **25. SUCCESSORS AND ASSIGNS**

All parties hereto agree that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and assigns.

## **26. APPLICABLE LAW, CONSTRUCTION, ATTORNEY'S FEES**

This Lease shall be construed in accordance with the laws of the Commonwealth of Virginia. If the EDA and Tenant are involved in any litigation regarding the performance of their obligations under this Lease, then each party shall be responsible for its own legal fees and expenses incurred by such party in connection with such litigation.

## **27. NOTICES**

Wherever in this Lease it shall be required or permitted that permission, notice, or demand be given or served by either party to this Lease to or on the other, such notices or demands shall be deemed given or served whether actually received or not when deposited in the United States Postal Service, postage pre-paid, certified or registered mail, addressed to parties hereto at the respective addresses set forth below or any other address that may be specified by the Parties.

### **Legal Notice Address for EDA:**

James City County EDA  
Attn: Secretary  
P.O. Box 8784  
Williamsburg, VA 23187-8784  
yesjcc@jamescitycountyva.gov

### **With Copy to:**

County Attorney  
P.O. Box 8784  
Williamsburg, VA 23187-8784

### **Tenant:**

Billsburg Brewery, Inc.  
Attn: Dave Baum  
205 Kingswood Drive  
Williamsburg, VA 23185  
dbaum23188@gmail.com

In each case when this Lease calls for an approval by the EDA, unless otherwise specified herein, such approval may be granted by the Chairman of the EDA or his designee and shall not require action by the EDA.

## **28. AUTHORITY OF PARTIES**

If the Tenant is a corporation, each individual executing this lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of said corporation or in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms.

## **29. PROPOSAL AND RFP; RELATIONSHIP TO LEASE AGREEMENT**

The Proposal and RFP shall be incorporated herein by reference. Any discrepancies between this Lease Agreement and the Proposal, and RFP shall be resolved in favor of the Lease Agreement, the RFP, and then the Proposal.

### **30. AMENDMENTS**

This Lease may be amended by signed, written agreement of the parties or their successors in interest.

### **31. FINAL UNDERSTANDING**

This Lease and all incorporated documents contains all agreements of the parties with respect to any matter mentioned herein.

**[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGES FOLLOW]**

**ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY**

By \_\_\_\_\_

Its:

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing Lease Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

Notary Registration No. \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
EDA Attorney

**BILLSBURG BREWERY, INC.**

By \_\_\_\_\_

Its:

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing Lease Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

Notary Registration No. \_\_\_\_\_

**ITEM SUMMARY**

DATE: 7/12/2018

TO: The Economic Development Authority

FROM: Maxwell Hlavin, EDA Legal Counsel

SUBJECT: Bond Policy Documents

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Final documents for EDA approval.

**ATTACHMENTS:**

	Description	Type
☐	Policy Statement	Exhibit
☐	Application Statement	Exhibit
☐	Operating Procedures	Exhibit

**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Jordan, Amy	Approved	7/9/2018 - 12:35 PM
Publication Management	Burcham, Nan	Approved	7/9/2018 - 12:38 PM
Economic Development Authority Clerk	Fellows, Teresa	Approved	7/9/2018 - 1:12 PM

**BOND FINANCING POLICY STATEMENT  
OF THE ECONOMIC DEVELOPMENT AUTHORITY  
OF JAMES CITY COUNTY, VIRGINIA**

Adopted August 23, 1979  
Revised May 9, 1984  
Revised July 11, 1984  
Revised May 29, 1985  
Revised June 10, 1988  
Revised March 21, 1989  
Revised May 9, 1996  
Revised July 12, 2018

I. One of the purposes of the James City County Economic Development Authority (the “Authority”) is to promote the orderly economic growth of James City County through encouragement of manufacturing, industrial, governmental, non-profit and commercial enterprises and institutions of higher education to locate in or remain in Virginia and, particularly, James City County by exercising its powers of authority under the Virginia Industrial Development and Revenue Bond Act (Chapter 49, Title 15.2, Code of Virginia, 1950, as amended) (the “Act”).

II. General Policies

- A. The Authority reserves the right to deny assistance to any applicant although such applicant and its project might be deemed eligible and qualify under the Act.
- B. The Authority, by adoption of any Inducement Resolution<sup>1</sup> or Bond Resolution,<sup>2</sup> does not intend for such action to constitute approval of the applicant, its policies, or its management.
- C. It is the Authority’s general guideline to assist by issuing revenue bonds for the purpose of financing capital expenditures and other costs permitted under the Act.
- D. It is understood and agreed by the applicant that all costs incurred in connection with this application shall be paid by the applicant, either from the proceeds of revenue bonds which may be issued by the Authority for the benefit of the applicant or, in the event that revenue bonds are not issued or the proceeds of such bonds are not sufficient to pay such costs, the applicant agrees to pay all costs from its own resources. Such costs, in addition to any costs of the applicant, shall include but not be limited to (1) the expenses of the Authority in connection with the study and processing of this application, if any; (2) the cost of independent financial or other consultants, if any, retained by the Authority; and (3) the cost of special legal counsel, if any, retained by the Authority.

Notwithstanding the foregoing, the Authority may, in its sole discretion, require an applicant to provide a deposit, in the form of a certified check or as otherwise determined by the Authority, in an amount determined by the Authority to cover all costs and expenses incurred by the Authority in connection with its study and review of the application and the feasibility of the proposed project and financing.

- E. The Authority shall rebate the application fee for an approved Grove Opportunity Zone (Census Tract ID 51095080102) industrial applicant once said applicant’s project locates within the Grove Opportunity Zone and at the written request of the applicant.

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Authority Secretary

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Authority Chairman

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<sup>1</sup> See Va. Code §§ 15.2-4905, -4906(B).

<sup>2</sup> See *id.* §§ 15.2-4906(C), -4910, -4911.



ADOPTED: August 23, 1979

Revised: May 9, 1996

Revised: July 12, 2018

**ECONOMIC DEVELOPMENT AUTHORITY OF THE COUNTY OF JAMES CITY**

**APPLICATION STATEMENT**

**A. APPLICANT:**

1. Legal name of applicant, type of entity and state of incorporation/organization:
  
  
  
  
  
  
  
  
  
  
2. Address and location of principal office:
  
  
  
  
  
  
  
  
  
  
3. Telephone number and email address:
  
  
  
  
  
  
  
  
  
  
4. Names and addresses of primary corporate officers:
  
  
  
  
  
  
  
  
  
  
5. Primary contact to whom correspondence should be directed:
  
  
  
  
  
  
  
  
  
  
6. Name and address of legal counsel for applicant:
  
  
  
  
  
  
  
  
  
  
7. Indicate name, type of entity, state of incorporation/organization and relationship of all direct or indirect parent companies of applicant.

B. STATEMENT OF BENEFITS TO JAMES CITY COUNTY AND THE COMMONWEALTH OF VIRGINIA FROM THIS PROJECT:

1. State what new employment opportunities will be created or retained as a result of this project, including number, types of jobs and estimated payroll.
2. Estimate all local taxes by type and amount projected to be paid to James City County as a result of this project.
3. Specifically, state other potential benefits which will accrue to the inhabitants of James City County and the State of Virginia, including economic, social, or other non-monetary benefits.

C. IDENTIFICATION AND DESCRIPTION OF PROPOSED PROJECT:

1. General location of proposed project in James City County.
2. Describe the type of facility which you are applying for financing. What operations will be conducted at the facility?

3. Are you applying for pollution control bonds? If so, please state the types of pollution generated by your facility and briefly describe the type of equipment which you propose to meet your pollution problems.
4. Describe the proposed arrangement to finance the cost of construction or acquisition of the project. Briefly detail a projected time schedule.
5. If the applicant currently owns the project site, indicate:
  - (a) Date of purchase
  - (b) Purchase price
  - (c) Balance of existing mortgage or other financing
  - (d) Holder of mortgage or other financing
6. If the applicant is not the owner of the project site, does the applicant have an option to purchase the site and any buildings on the site? If yes, indicate:
  - (a) Date option agreement signed with owner
  - (b) Purchase price under option
  - (c) Expiration date of option
7. Has the applicant entered into a contract to purchase the site? If yes, indicate:
  - (a) Date signed
  - (b) Purchase price
  - (c) Expected settlement date

8. Who is the present owner of the project site, and what is the relationship between the present legal owner and the applicant?
9. If pollution control bonds are issued, please indicate:
- (a) Whether the total project is designed for any significant purpose other than the control of pollution, i.e., does the project result in an increase in production or capacity, or in a material extension of the useful life of a manufacturing or production facility or a part thereof.
  - (b) Estimated incremental cost of the project if the project is for the purpose of controlling pollution and for a significant purpose other than controlling pollution.
10. Status of plans for the project. Please indicate architect, engineer, general contractor and major subcontractors, as applicable.
11. Has construction work on this project begun? If yes, complete the following:
- (a) Site clearance                      \_\_\_\_\_ yes    \_\_\_\_\_ no    \_\_\_\_\_% complete
  - (b) Foundation                            \_\_\_\_\_ yes    \_\_\_\_\_ no    \_\_\_\_\_% complete
  - (c) Footings                                \_\_\_\_\_ yes    \_\_\_\_\_ no    \_\_\_\_\_% complete
  - (d) Steel                                      \_\_\_\_\_ yes    \_\_\_\_\_ no    \_\_\_\_\_% complete
  - (e) Masonry work                        \_\_\_\_\_ yes    \_\_\_\_\_ no    \_\_\_\_\_% complete
  - (f) Other (describe below)            \_\_\_\_\_ yes    \_\_\_\_\_ no    \_\_\_\_\_% complete

12. List principal items or categories of equipment to be acquired as part of the project.

13. Has any of the above equipment been ordered or purchased? If yes, indicate:

<u>Item</u>	<u>Date ordered</u>	<u>Delivery date</u>	<u>Price</u>

14. State the proposed uses of bond proceeds.

Description of Cost

Land

Buildings

Equipment

Engineering

Architecture

Interest during construction

Original Issue Bond Discount

Costs of issuance

Reserves

Other (please explain)

Face amount of issue

15. Have any of the above expenditures already been made by the applicant? If yes, indicate particulars:
16. Have any of the above expenditures been incurred but not paid by the applicant? If yes, indicate particulars:
17. Are costs of working capital, moving expenses, work in process, or stock in trade included in the proposed uses of bond proceeds?
18. Will any of the funds to be borrowed through the Authority be used to repay or refinance an existing mortgage or outstanding loan?
19. If any space in the project is to be leased to third parties, indicate total square footage of the project, amount to be leased to each tenant, and proposed use by each tenant.
20. Type and amount of outstanding debt incurred by applicant. In addition, separately state the type and amount of outstanding bonds or other obligations, if any, on the present facilities. Include full debt service schedule for each separate obligation.

21. Brief description of existing facilities:

- (a) Describe the location and type of existing facilities (including, if applicable, pollution abatement equipment now provided, its design, capacity, and year constructed). Indicate if the existing facilities are to be abandoned or will continue in use as part of the proposed new facility.
- (b) Estimated first year annual operation and maintenance cost of any existing facility and the proposed facility.
- (c) Age and condition of existing buildings, if any improvements included within this project are to be made thereto, and whether owned in fee or leased.

22. Will the construction, occupation, operation or use of the project involve the creation of any pollutants or other emissions, or the use or manufacture of any toxic or hazardous substances? Will operation of the project involve consumption or use of large amounts of electricity, water, gas or other services as products customarily furnished by utilities? Will construction or operation of the project have any impact upon local businesses or residents, such as emission of odors, traffic in and out of the project, or storage of large amounts of materials at the project site? Please provide particulars.

D. FINANCIAL:

1. Commercial banking connections and for how long a period.
2. Attach to application the following proof of financial responsibility for the preceding 3 years:
  - (a) Financial statements, including the audit, review or compilation report from a certified public accounting firm
  - (b) Tax returns

If the applicant does not have an annual audit, review or compilation, submit internal financial statements. If the applicant is a new or recently formed business entity, without recent financial statements, the applicant should furnish the financial information required by the application for each principal shareholder, partner or other principal of the applicant. If the applicant is a subsidiary corporation without its own financial statements, financial statements of the parent corporation or consolidated financial statements may be submitted. If the obligations of the applicant will be guaranteed by any person or business entity, then financial statements of such guarantor should also be included with the application. Pro forma financial statements, if available, should be submitted with the application. Because this application will become a part of the public records of the Authority, in the event the applicant does not desire financial records not otherwise available to the public to be included in the public record, please so indicate on the records so that such records may be returned to the applicant.

3. Has the applicant, any proposed guarantor, or any of their principal partners or shareholders ever declared bankruptcy or been involved in any bankruptcy or insolvency proceeding, whether voluntary or involuntary? If so, describe particulars.
4. Has any underwriter, broker or investment banker been retained by applicant in connection with this proposed bond issue? If so, who?



5. Please indicate the person or institution to whom the bonds will be sold or any persons or institutions which have indicated an interest in purchasing or underwriting the bonds.

E. MISCELLANEOUS:

1. Is the applicant or any major shareholder or partner presently involved in any litigation, investigation or proceeding? If so, please describe.
2. Is the applicant or any major shareholder or partner of the applicant, or any other person working for the applicant in this proposed financing subject to any order, decree or judgment of any court or administrative or other governmental agency or body? If so, please describe.
3. Is the applicant, or any of its shareholders or partners, or any guarantor, or any other person representing applicant in connection with this proposed financing, involved in any investigation, litigation or proceeding relating to the issuance or sale of securities or any applicable banking laws or regulations? Have any of the foregoing persons ever been involved in any such investigation, litigation or proceeding? If so, please describe details in full.
4. Is the applicant subject to any regulatory sanction (other than in the ordinary course of business) by any Federal or State administrative agencies or bodies? If so, please provide details.

F. AGREEMENT:

To induce the Economic Development Authority of the County of James City to consider this application, it is understood and agreed that the applicant is required:

1. To pay all cost and expenses incurred by the Authority in connection with this application, either from the proceeds of Industrial Revenue Bonds which might be approved for the project by the Authority or in the event such assistance is not approved or forthcoming or the proceeds are not sufficient, to pay all cost and expenses from its own resources.
2. To pay, in addition to all cost and expenses incurred by the Authority, a nonrefundable applicant fee to the Authority of \$400.00, to be paid at the time of submittal of this application.
3. To pay, in addition to all costs, expenses, and application fee, an administrative fee of either (check one):

\_\_\_\_\_  $\frac{1}{2}$  of 1% of the bond amount up to \$5 million, plus  $\frac{1}{10}$  of 1% of the bond amount over \$5 million, with a total minimum fee of \$1,250, said fee to be paid at closing; or

\_\_\_\_\_  $\frac{1}{8}$  of 1% of the declining principle bond balance annually at the end of each calendar year for the life of the bond, said fee to be guaranteed by a binding promissory note at closing.

Administrative fees may be paid from bond proceeds to the extent permitted by law.

4. To comply with the Authority's Rules and Procedures, a copy of which has been received by the applicant.
5. To certify that all statements and information furnished with this application or on supporting papers are true and correct to its best knowledge and belief.
6. To advise the Authority in writing immediately of any material changes to the information contained in this application.
7. To certify that it understands the conditions of this application, and that there is no guarantee of approval of this application by the Authority.

This application is approved and submitted by the \_\_\_\_\_  
(Authorized Agent)

of the \_\_\_\_\_

\_\_\_\_\_(Official Name of Applicant)

on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

WITNESS:

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

(SEAL)

FISCAL IMPACT STATEMENT  
FOR PROPOSED INDUSTRIAL REVENUE BOND FINANCING

Date:

To the Board of Supervisors of  
James City County, Virginia

Applicant: \_\_\_\_\_

Facility: \_\_\_\_\_

- |      |  |          |
|------|--|----------|
| 1.   | Maximum amount of financing sought   | \$       |
| 2.   | Estimated taxable value of the facility's<br>real property to be constructed in the<br>locality                          | \$       |
| 3.   | Estimated real property tax per year<br>using present tax rates  | \$       |
| 4.   | Estimated personal property tax per<br>Year using present tax rates  | \$ _____ |
| 5.   | Estimated merchants' capital tax per<br>year using present tax rates   | \$       |
| 6.a. | Estimated dollar value per year of goods that<br>will be purchased from Virginia companies<br>within the locality        | \$       |
| b.   | Estimated dollar value per year of goods that<br>will be purchased from non-Virginia companies<br>within the locality    | \$       |
| c.   | Estimated dollar value per year of services that<br>will be purchased from Virginia companies<br>within the locality     | \$       |
| d.   | Estimated dollar value per year of services that<br>will be purchased from non-Virginia companies<br>within the locality | \$       |
| 7.   | Estimated number of regular employees<br>on year round basis   | \$       |
| 8.   | Average annual salary per employee   | \$       |

\_\_\_\_\_  
Chairman, Economic Development Authority of  
James City County, Virginia

BOND FINANCING OPERATING PROCEDURES OF THE  
ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA

I. MEETINGS

All meetings are scheduled by the Chairman or, in the Chairman's absence, the Vice Chairman. However, all contacts regarding the scheduling of meetings will be made through the Secretary of the Authority, who will coordinate and process requests for meetings (Phone: 757-253-6607; 101 Mounts Bay Road; P. O. Box 8784; Williamsburg, Virginia, 23187).

The Authority will consider applications for revenue bond financing, bond issue inducement resolutions, forms of bond documents, leases, and other documents submitted for its approval only after the application, resolutions, or documents have been reviewed by the Authority's staff and counsel. If required by federal or state law, an advertised public hearing will be held by the Authority. The applicant is responsible for writing and placing the appropriate advertisement in the appropriate newspaper or other media permitted by federal and state law for bond public hearing and approval purposes.<sup>1</sup> The advertisements shall appear once a week for two consecutive weeks, with the second notice appearing not less than 6 nor more than 21 days prior to the date of the public hearing. Whenever required by federal and state law for bond approval purposes,<sup>2</sup> the Authority will seek the concurrence of the James City County Board of Supervisors prior to bond closing.

In general, if the necessary reviews can be completed within 30 days of the date of receipt, meetings will typically be scheduled within 30 days after the submittal date. However, meetings may be scheduled more than 30 days after a submittal if the Chairman (or Vice-Chairman) determines, in his discretion, that the level of complexity of a particular submittal requires additional review, that the Authority would like to group several matters on one meeting date, that a later date is required to assure a quorum of Authority members, or that additional time is required to advertise for the public hearing.

Meetings of the Authority are public meetings and appropriate notice of meetings will be provided to the public by the Authority's Secretary.

Executive sessions will be scheduled at the request of the applicant, but only after the Authority's Counsel reviews the request for applicability under the Virginia Freedom of Information Act's exemptions.

Notice of all meetings and the agendas for meetings will be sent to the Authority's Board liaison from the James City County Board of Supervisors.

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<sup>1</sup> This shall include any hearing and notice requirements for the Tax Equity and Fiscal Responsibility Tax Act of 1982 (commonly referred to as "TEFRA"), the Internal Revenue Code, and all associated regulations.

<sup>2</sup> See note 1.

If possible, meetings and public hearings related to applications will be scheduled for a regular meeting of the Authority. Agendas, if possible, will be kept to a length so that meetings may be concluded within two hours.

## II. APPLICATIONS PROCESS

- A. All contacts for information regarding the bond financing operation of the Authority shall be referred to the Secretary of the Authority.
- B. Applicants wishing to make a presentation to the Authority shall submit a written request and one (1) complete copy of the Authority's application package to the Secretary at least 30 days prior to the Authority's meeting at which it is to be considered.

Only complete applications will be considered by the Authority. A complete application includes:

- (1) A completed and signed application form.
- (2) A four-hundred dollar (\$400.00) nonrefundable application fee.
- (3) A resolution of inducement prepared by the applicant's bond counsel. Typically, each inducement resolution adopted by the Authority will include a 12-month time limitation, after which, if the bonds have not been sold, the resolution will expire unless otherwise extended by the Authority.
- (4) A letter from a lending source expressing an interest in the purchase of the bonds.
- (5) A letter from the applicant's bond counsel stating that he or she has reviewed all applicable Virginia and Federal statutes and in his opinion the project meets the eligibility requirements of the appropriate statutes for revenue bond financing.
- (6) Financial statements for the past three years of the entity backing the bonds (see application form).
- (7) Other supporting data the applicant may wish to present in support of its application. Such data may include such items as architectural or engineering plans, market studies, company annual reports, feasibility studies, etc.

- C. The Secretary shall distribute copies of the applications to individual Authority members accompanied by a staff report which shall address the potential economic impact of the project as well as its compatibility within the County.
- D. Following the submission of an application and its review by the staff, the Authority shall hold a public hearing on the application, if required by law, after which it may consider the adoption of an Inducement Resolution or final Approving Resolution.
- E. At the discretion of the Authority, further document review and modification by independent financial and legal counsels may be required. The applicant is responsible for any and all costs incurred by the Authority for such review and modification.
- F. After approval of the Inducement Resolution or final Approving Resolution, the resolution and the application shall be forwarded by the Authority's Secretary to the James City County Board of Supervisors. If required by law, the James City County Board of Supervisors must concur in the Authority's decision to assist with the applicant's proposed financing prior to the issuance of the bonds. Such submission shall be accompanied by a summary of public hearing statements and a fiscal impact statement in the form required by law.
- G. After concurrence by the Board of Supervisors, if the final Approving Resolution has not yet been considered, the Authority shall meet to consider the necessary lease agreement, indenture or bond purchase agreement, form of bonds, and all other matters required to complete the bond issue. Such documents shall be developed by the applicant's attorney with an electronic copy submitted to the Secretary at least two weeks prior to the scheduled date for the Authority to consider any final approvals.
- H. When bonds are printed, the applicant, the Chairman (or Vice Chairman) and the Secretary of the Authority and the Authority's counsel (including bond counsel engaged by applicant and Authority to close the loan) will meet at a mutually acceptable time to formally close the loan and sign the necessary papers and agreements.
- I. The applicant's and Authority's bond counsel, if any, who closed the loan shall prepare a full bond transcript for the Authority and forward same to the Secretary for the Authority's files.

### III. FEES AND EXPENSES FOR NEW MONEY AND REFINANCING ISSUANCE

- A. Applicant shall pay the Authority a nonrefundable \$400.00 application fee which is due when an application is filed for revenue bond financing.

B. Applicant shall opt to pay to the Authority an administrative fee of either:

- (1)  $\frac{1}{2}$  of 1% of the bond amount up to \$5 million, plus  $\frac{1}{10}$  of 1% of the bond amount over \$5 million, with a total minimum fee of \$1,250, said fee to be paid at closing; or
- (2)  $\frac{1}{8}$  of 1% of the declining principal bond balance annually at the end of each calendar year for the life of the bond, said fee to be guaranteed by a binding promissory note or loan agreement at closing.

The applicant shall declare the servicing fee option preference with its bond application. Administrative fees may be paid from bond proceeds to the extent permitted by law. The Authority's Bond Counsel shall submit a letter to the Authority's Secretary at closing informing the Secretary of the servicing fee option selected by the applicant.

C. If the annual administrative fee option is selected by the applicant, the Authority's Fiscal Agent shall bill the applicant for said fee at the end of each calendar year for the life of the bond. This bill is payable upon receipt to the Economic Development Authority of James City County, Virginia, and shall be sent directly to the Authority's Treasurer. Upon receipt of the annual administrative fee, the Treasurer shall inform the Secretary and the Fiscal Agent of receipt of the payment.



**ITEM SUMMARY**

DATE: 7/12/2018

TO: The Economic Development Authority

FROM: Amy B. Jordan, EDA Secretary

SUBJECT: Bylaws Discussion

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Due to recent information sent out regarding attendance policies, a copy of the EDA's by-laws and approved calendar have been provided for discussion. The Board of Supervisors also recently adopted a Whistle blower/Conflict of Interest Policy that applies to both staff and boards and commissions. A copy of this policy has also been included.

**ATTACHMENTS:**

	Description	Type
☐	Adopted EDA Bylaws	Exhibit
☐	Chapter 12 Personnel Policy Adopted by the BOS	Exhibit
☐	2018 Meeting Calendar	Cover Memo

**REVIEWERS:**

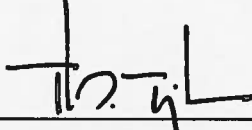
Department	Reviewer	Action	Date
Economic Development Authority	Fellows, Teresa	Approved	7/9/2018 - 5:04 PM

**Economic Development Authority of**

**James City County, Virginia**

**Bylaws**

**Adopted January 14, 2016**

  
\_\_\_\_\_  
**Thomas Tingle, Chairman**

**Article I – Authority and Name**

James City County Code Section 2-17, Economic development authority created, established a political subdivision of the Commonwealth of Virginia with such public and corporate powers as are set forth in the Industrial Development and Revenue Bond Act (chapter 49, title 15.2 of the *Code of Virginia*, 1950, as amended, the “Act”), including such powers as may be set forth from time to time in that act.

The name of the political subdivision of the Commonwealth created is the “Economic Development Authority of the County of James City, Virginia,” referred to hereinafter as the “Authority.”

**Article II – Objective and Purpose**

The Authority shall exercise its powers for the purposes enacted by the General Assembly of Virginia set forth in the Act and ordained by the Board of Supervisors of the County of James City Virginia (the “Board of Supervisors”) in its County Code on September 8, 1969, and as amended.

In establishing the Authority, it was the express goal of the Board of Supervisors to encourage the Authority to pursue and comply with the goals and objectives as set forth in the comprehensive plan of the County of James City, Virginia (the “County”) as amended, and particularly the economic development component thereof.

**Article III – Organization**

The Authority shall be governed by a board of directors (the “Board of Directors”) composed of seven (7) members (the “Directors,” with each being a “Director”) appointed by the Board of

Economic Development Authority By-laws  
Reviewed by County Attorney: 1/14/2016  
Approved by Resolution: 1/14/2016

Supervisors, all of whom shall, at the time of his appointment and thereafter, be residents of the County. No Director shall be an officer or employee of the County. Directors shall be appointed for terms of four (4) years and may be reappointed by the Board of Supervisors upon expiration of their term. If at the end of any term of any Director a successor thereto has not been appointed, then the Director whose term has expired shall continue to serve as a Director until his successor is appointed and qualified. Each year, one member of the Board of Supervisors shall serve as a liaison to the Authority for a one-year term.

**REQUIREMENTS.** Directors of the Authority shall be required to attend meetings regularly. If a Director is absent from three (3) consecutive regularly scheduled meetings, or is absent from any four (4) meetings of the Authority within any 12-month period, the Director may, upon resolution of the Board of Directors, be presumed to have voluntarily resigned from the Authority, and, if so presumed, the Board of Directors shall request that the Board of Supervisors fill the vacancy.

**APPOINTMENTS.** The Board of Supervisors shall appoint Directors consistent with the procedures adopted by that body.

**VACANCIES.** Should a Director position become vacant or the Authority become aware of an upcoming vacancy, the Board of Directors shall, by resolution, request that the Board of Supervisors appoint a new Director as expeditiously as possible. Any appointment to fill a vacancy shall be for the unexpired term of that position.

#### Article IV – Officers

Generally – The officers of the Authority shall be a Chairman (the “Chairman”) and a Vice-Chairman (the “Vice-Chairman”).

The officers shall be elected at the annual organizational meeting of the Authority. The officers shall hold office for one (1) year, beginning January 1 of the year following the organizational meeting of the Authority, such term to continue until their successors are elected and qualified. An officer may not serve more than three (3) consecutive terms.

**CHAIRMAN.** The Chairman shall preside at all meetings of the Authority. Except as otherwise authorized by resolution of the Authority, the Chairman, or his designee shall sign all contracts, deeds, and other instruments made by the Authority. The Chairman, or his designee, shall make decisions regarding the day-to-day management of property owned or leased by the Authority; however, any decision encumbering or disposing of a property interest shall be made by the Authority consistent with Article VII. The Chairman, or his designee, shall make day-to-day operational finance decisions in keeping with the Authority’s budget approved by the Board of

Directors and shall work with the Authority's Secretary and Treasurer in preparing the budget. At each meeting the Chairman may submit such recommendations and information as he considers proper concerning the business affairs and policies of the Authority. The Chairman shall appoint all members and Chairs of committees and subcommittees.

**VICE-CHAIRMAN.** The Vice-Chairman shall perform the duties of the Chairman in the absence or incapacity of the Chairman, and in case of the resignation or death of the Chairman, the Vice-Chairman shall perform such duties as are imposed on the Chairman until such time as the Authority shall select a new Chairman.

**SECRETARY.** The Director of the James City County Office of Economic Development shall serve as Secretary Ex-Officio unless otherwise directed by the Authority. The Secretary shall perform the duties of the Chairman in the absence or incapacity of both the Chairman and Vice-Chairman. The Secretary shall keep, or shall assign an Assistant Secretary or Recording Secretary to accurately keep, the minutes of the meetings of the Board of Directors of the Authority as the Authority may require. The Secretary shall keep, or assign to be kept in safe custody, the seal of the Authority and shall have the power to affix such seal to all instruments as authorized by the Authority.

**TREASURER.** The Treasurer of James City County, Virginia (JCCT) and the Director of the James City County Department of Financial and Management Services (FMS) or their designees shall serve jointly as the Treasurer of the Authority (the "Treasurer"). JCCT shall be responsible for the revenues of the Authority. FMS shall be responsible for all expenditures and accounting of the Authority. The Treasurer shall provide monthly activity reports to the Authority at each regular meeting of the Authority. Within three (3) months of the end of the Authority's fiscal year, FMS shall arrange for an audit for that preceding fiscal year in accordance with Section 30-140 of the Code of Virginia (1950), as amended.

**VACANCIES.** Should an office of the Authority become vacant, the Directors shall elect a successor from their membership at the next meeting, regular or special, and such election shall be for the unexpired term of said office.

## **Article V – Meetings**

**REGULAR MEETINGS.** Subject to any contrary resolution of the Board of Directors, monthly meetings shall be held at the regular meeting place of the Authority as scheduled by the annual calendar adopted at the organizational meeting. The Authority shall hold at least ten (10) meetings of its Board of Directors each calendar year.

**ORGANIZATIONAL MEETING.** Subject to any contrary resolution of the Authority, the organizational meeting of the Authority shall be held at the regular monthly meeting in December of each year.

**SPECIAL MEETINGS.** The Chairman of the Authority may, when deemed expedient, or upon the written request of two (2) Directors of the Authority, call a special or emergency meeting of the Authority for the purpose of transacting any business designated in the call. Reasonable notice of a special or emergency meeting shall be delivered to each Director of the Authority alerting them of the time and place of such meeting, and notice, reasonable under the circumstances, shall be given to the public contemporaneously therewith. At such special or emergency meeting, no business shall be considered other than as designated in the call.

**REMOTE PARTICIPATION.** Directors may participate in regular or special meetings from a remote location in accordance with a policy adopted by the Authority pursuant to Va. Code § 2.2-3708.1.

All meetings of the Authority and its committees shall comply with the Virginia Freedom of Information Act (Title 2.2, Chapter 37 of the *Code of Virginia*, 1950, as amended) and may hold closed sessions as permitted therein.

#### Article VI – Committees/Liaisons

The Chairman may create, and assign Directors to, committees from time to time as needed to execute specific or ongoing tasks. Committees shall be governed similarly to the Board of Directors and shall comply with the Virginia Freedom of Information Act. For each committee, the Chairman shall appoint a Chair, who shall be responsible for the administration of the committee's duties.

The Chairman or his/her designee shall serve as liaison to other organizations and public bodies. Liaisons shall be responsible for keeping current with the entities to which they have been assigned and informing the Board of Directors of the Authority of all occurrences and actions relevant to the business of the Authority.

#### Article VII – Voting

**QUORUM.** Four (4) members of the Board of Directors shall constitute a quorum for the purposes of conducting the business of the Authority and for exercising its powers and for all other purposes, except that no facilities owned by the Authority shall be leased or disposed of in

any manner without an affirmative vote of at least four (4) of the members of the Board of Directors. Directors must be physically present at a meeting in order to count towards a quorum.

**CONFLICTS.** No Director present shall abstain from voting on a roll call vote unless a Director has a conflict of interest in the matter being voted upon. For the purposes of this paragraph, a "conflict of interest" shall exist when there is an actual conflict: (1) pursuant to the Virginia State and Local Government Conflict of Interests Act, Section 2.2-3100 et seq. of the Virginia Code; or (2) pursuant to any applicable policy adopted by the Authority; or (3) as stated by the Director unless objected to by a majority vote of the members of the Authority.

#### **Article VIII – Indemnity of Officers, Directors, and Agents**

The Reports of the Attorney General, 1978-79 at page 141, and 1979-80 at page 11 hold that political subdivisions of the Commonwealth of Virginia, including the Authority, may not enter into an agreement which purports to accept liability for tort claims. Without a referendum, the Authority cannot enter into a hold harmless agreement.

Bonds issued by the Authority shall be in accordance with the Act and neither the Directors of the Authority nor any person executing the bonds shall be personally liable on the bonds by reason of the issuance.

#### **Article IX – Amendments to Bylaws**

The Bylaws of the Authority shall be amended only with the approval of a quorum, as defined herein at a regular or special meeting of the Authority, provided that notice of the proposed amendment and the general terms of the amendment shall have been given to the Directors not less than five (5) days prior to such meeting.

#### **Article X – Parliamentary Procedure**

The Authority shall follow the most recent edition of Robert's Rules of Order, and more specifically, the provisions which pertain to the "conduct of business in boards" and in particular, the "Procedure in Small Boards."

## **Article XI – Conflicting Provisions**

If any of these Bylaws should be inconsistent with the terms, conditions, or stipulations of any agreement entered into by the Authority to secure bonds issued by the Authority, such conflicting provisions of these Bylaws shall, to the extent of such conflict, be deemed ineffective and of no force.

## **Article XII – Oaths, Code of Ethics**

Each Director, before entering upon the discharge of duties, shall take and subscribe to the oath of office required by Section 49-1 of the Code of Virginia, (1950) as amended.

All members of the Board of Directors shall sign and uphold the Code of Ethics approved by the Board of Supervisors of the County of James City, Virginia on March 28, 2006, and as amended.

Conflicts of interest of any member of the Board of Directors as to any matter before the Authority shall be addressed and disclosed in consultation with the James City County Attorney's Office, which may issue an informal opinion, or with the Commonwealth's Attorney's Office, which may issue a formal opinion as to the conflict.

## **Article XIII – Dissolution of Authority**

Whenever the Board of Directors by resolution determines that the purposes for which the Authority was formed have been substantially complied with and all bonds theretofore issued and all obligations theretofore incurred by the Authority have been fully paid, the Board of Directors shall thereupon execute and file for record with the Board of Supervisors, a resolution declaring such facts. If the Board of Supervisors is of the opinion that the facts stated in the Authority's resolution are true and that the Authority should be dissolved, it shall so resolve and the Authority shall stand dissolved. Upon such dissolution, the title to all funds and properties owned by the Authority at the time of such dissolution shall vest in the County of James City, Virginia and possession of such funds and properties shall forthwith be delivered thereto.

**RESOLUTION**

**ADDITION OF CHAPTER 12 OF THE JAMES CITY COUNTY**

**PERSONNEL POLICIES AND PROCEDURES MANUAL**

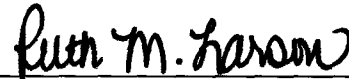
WHEREAS, the James City County Personnel Policies and Procedures Manual is an important document that guides decisions; and

WHEREAS, it is the practice of the County to create policy to ensure staff understanding of legal requirements; and

WHEREAS, the current policy manual does not address the rights and responsibilities regarding laws for Conflict of Interest and Whistleblower protections; and

WHEREAS, staff recommends adoption of a Chapter 12, Conflict of Interest & Whistleblower Policy of the Personnel Policies and Procedures Manual to ensure James City County is compliant with the law.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the revisions to the Personnel Policies and Procedures Manual listed above and set forth in the staff memorandum are adopted effective March 13, 2018.



Ruth M. Larson  
Chairman, Board of Supervisors

ATTEST:



Teresa J. Fellows  
Deputy Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ICENHOUR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SADLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HIPPLE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LARSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of March, 2018.

Ch12ConflictofInt-res



## CHAPTER 12

### CONFLICT OF INTEREST & WHISTLEBLOWER POLICY

#### Section 12.1      Purpose

This policy is based upon the State and Local Government Conflict of Interest Act, Code of Virginia, Title 2.2, Chapter 31 and the Fraud and Abuse Whistle Blower Protection Act, Code of Virginia, Title 2.2, Chapter 30.1.

The policy is designed to help directors, members of Boards, Committees and Commissions, officers, volunteers and employees of James City County ("the County") identify situations that present potential conflicts of interest and to provide James City County with a procedure that, if observed, will allow a transaction or agreement to be treated as valid and binding even though a director, member of a Board, Committee or Commission, officer, volunteer or employee has or may have a conflict of interest with respect to the transaction or agreement. In the event there is an inconsistency between the requirements and procedures prescribed herein and those in federal or state law, the law shall control.

#### Section 12.2      Definitions

1. A "Conflict of Interest" is a personal interest in a contract or transaction considered by the County.
2. A "Contract" means any agreement to which the County is a party, or any agreement on behalf of the County that involves the payment of money appropriated by the General Assembly or a political subdivision, whether or not such agreement is executed in the name of the County.
3. A "Responsible Person" is any person serving as an officer, employee or member of the Board of Supervisors or any other Board, Committee, or Commission of the County.
4. An "Immediate Family Member" means (i) a spouse and (ii) any other person who resides in the same household as the officer or employee and who is a dependent of the officer or employee as defined by; State and Local Government Conflict of Interest Act, Code of Virginia, Title 2.2, Chapter 31.
5. A "Personal Interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be

anticipated to exceed, \$5,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$5,000 annually; (iv) ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv).

6. A "Transaction" is any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

### Section 12.3      Prohibited Contracts and Conduct

For purposes of this policy, the following contracts and conduct are prohibited. Violations of the following shall be deemed an impermissible Conflict of Interest:

#### A. Contracts

- No person elected or appointed as a member of the County Board of Supervisors shall have a Personal Interest in any contract with the governing body.
- No other officer or employee of the County shall have a personal interest in a contract.

#### B. Conduct

No officer or employee of the County shall:

- Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the County;
- Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment or promotion of any person with any governmental or advisory agency;
- Offer or accept any money or other thing of value for or in consideration of the use of a public position to obtain a contract for any person or business with any governmental or advisory agency;

- Use for own economic benefit or that of another party confidential information that has been acquired by reason of their public position and which is not available to the public;
- Accept any money, loan, gift, favor, service or business or professional opportunity that reasonably tends to influence the performance of official duties;
- Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties; or use his public position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law.

These prohibitions do not preclude the acceptance of items of nominal or insignificant value or entertainment of nominal or insignificant value that are not related to any particular transaction or activity of James City County.

#### Section 12.4. Conflict of Interest Procedures

Before County action on a Contract or Transaction involving a Conflict of Interest, a Responsible Person having a Conflict of Interest and who is in attendance at the meeting shall disclose all facts material to the Conflict of Interest. Such disclosure shall be reflected in the minutes of the meeting.

A Responsible Person who plans not to attend a meeting at which he or she has reason to believe that the Board or Committee will act on a matter in which the person has a Conflict of Interest shall disclose to the chair of the meeting all facts material to the Conflict of Interest. The chair shall report the disclosure at the meeting and the disclosure shall be reflected in the minutes of the meeting.

A Responsible Person who has a Conflict of Interest shall not participate in discussion of the matter except to disclose material facts and to respond to questions. Such person shall not attempt to exert his or her personal influence with respect to the matter, either during or outside the meeting.

A Responsible Person who has a Conflict of Interest with respect to a Contract or Transaction that will be voted on at a meeting shall not be counted in determining the presence of a quorum for purposes of the vote. The person having a conflict of interest may not vote on the Contract or Transaction.

Employees who have a Conflict of Interest with respect to a Contract or Transaction that is not the subject of Board or Committee action shall disclose to his or her supervisor any Conflict of Interest that such Responsible Person has with respect to an Agreement or Transaction. Such disclosure shall be made as soon as the Conflict of Interest is known to the Responsible Person.



The Responsible Person shall refrain from any action that may affect the County's participation in such Contract or Transaction.

A current or prospective employee who has accepted an employment offer with the County cannot maintain or accept paid employment outside of the County without an approved Outside Employment request. This request is reviewed to ensure there is no actual or perceived Conflict of Interest.

In the event it is not entirely clear that a Conflict of Interest exists, the Responsible Person with the potential conflict shall disclose the circumstances to the Board, Committee, or Commission Chair or the Chair's designee or to his or her supervisor, who shall determine whether there exists a Conflict of Interest that is subject to this policy.

#### Section 12.5      Confidentiality

Each Responsible Person shall exercise care not to disclose confidential information acquired in connection with his or her association with the County the disclosure of which might be adverse to the interests of the County. Furthermore, a Responsible Person shall not disclose or use information relating to the business of the County for the personal profit or advantage of the Responsible Person or an Immediate Family Member.

#### Section 12.6      Review of Policy

Each new Responsible Person shall be required to review this Policy and to acknowledge in writing that he or she has done so.

Each Responsible Person shall comply with the disclosure requirements of the State and Local Government Conflicts of Interest Act identifying any relationships, positions or circumstances in which the Responsible Person is involved that he or she believes could contribute to a Conflict of Interest arising. Such relationships, positions or circumstances might include service as a director of or consultant to a not-for-profit organization, or ownership of a business that might provide goods or services to the County. Each Responsible Person should also disclose any potential Conflict of Interest that may arise during the course of the year between the submissions of annual disclosure forms.

This policy shall be reviewed regularly. Any changes to the policy shall be communicated immediately to all Responsible Persons.

#### Section 12.7      Reporting a Violation of Law or Policy – Whistle Blower Protection

This policy provides a mechanism whereby, if an employee or volunteer becomes aware of a violation of policy or law, he or she can report a perceived violation made in good faith and upon reasonable belief without fear of retaliation.

#### Section 12.8      Objective

Elected officials, officers, employees, independent contractors or other public stakeholders shall have an open opportunity to bring to the attention of administration, allegations of wrongdoing or malfeasance on the part of elected officials, officers, employees, independent contractors or other public stakeholders associated with the County. This includes but is not limited to violations of law, gross waste of funds or property, or abuse or neglect of a fiduciary duty. These allegations will usually fall into the following categories:

- Commission of criminal offences.
- Instances of regulatory non-compliance.
- Issues of probity and propriety, e.g. fraud, theft, bribery, corruption and embezzlement.

Retaliation towards those who report such allegations will not be tolerated. Those who retaliate, interfere with investigations, or destroy or conceal evidence will be subject to immediate disciplinary actions. Employees who willfully file complaints based upon information known by the employee making the allegations to be false or misrepresented, will also be subject to disciplinary action.

The County shall appropriately notify employees of the protections and obligations afforded to them under the Fraud and Abuse Whistle Blower Protection Act.

#### Section 12.9      Procedures

The Director of Human Resources of the County, shall receive allegations pursuant to the provisions of this policy. Reports of alleged wrongdoing should be submitted in writing, and include a verifiable name, address and telephone number of the reporter. Reports or allegations submitted anonymously may or may not be investigated. The Director of Human Resources or his/her designee will conduct an investigation of the complaint. Referrals shall be made to the appropriate law enforcement agencies when there is reason to believe that a crime may have been committed.

Investigations will be conducted promptly and a written report with investigative findings and conclusions shall be sent to the County Administrator and the County Attorney for the County within 60 days of the

date on which the allegations were received. The County Administrator will take appropriate action on the report's recommendations.

An employee or applicant who believes that retaliation prohibited by this policy has occurred is encouraged to file a complaint with the Director of Human Resources within a reasonable time period from the date of the alleged retaliation. Each report of retaliation, if submitted within 60 days, will follow the same investigative policy as outlined above.

This policy is not to be substituted or used in place of the Code of Virginia or other County personnel policies and procedures for personnel matters other than those described above.

The Director of Human Resources, County Board of Supervisors and the County Administrator are encouraged to consult with the County Attorney's Office to resolve questions regarding the State and Local Government Conflict of Interest Act, Code of Virginia, Title 2.2, Chapter 31 and the Fraud and Abuse Whistle Blower Protection Act, Code of Virginia, Title 2.2, Chapter 30.1.

**2018 MEETING CALENDAR  
ECONOMIC DEVELOPMENT AUTHORITY  
OF JAMES CITY COUNTY, VIRGINIA**

8:00 AM, THURSDAY, JANUARY 11, 2018

8:00 AM, THURSDAY, FEBRUARY 8, 2018

8:00 AM, THURSDAY, MARCH 8, 2018

8:00 AM, THURSDAY, APRIL 12, 2018

8:00 AM, THURSDAY, MAY 10, 2018

8:00 AM, THURSDAY, JUNE 14, 2018

8:00 AM, THURSDAY, JULY 12, 2018

8:00 AM, THURSDAY, AUGUST 9, 2018

8:00 AM, THURSDAY, SEPTEMBER 13, 2018

8:00 AM, THURSDAY, OCTOBER 11, 2018

8:00 AM, THURSDAY, NOVEMBER 8, 2018

8:00 AM, THURSDAY, DECEMBER 13, 2018

The Economic Development Authority reserves the right to modify this schedule as necessary. Special meetings may also need to be called as situations warrant.

Unless posted to the contrary, all meetings will be held in the main conference room of 101-D Mounts Bay Road, Williamsburg, VA 23185.



**ITEM SUMMARY**

DATE: 7/12/2018

TO: The Economic Development Authority

FROM: Amy B. Jordan, EDA Secretary

SUBJECT: Real Estate Holdings Committee - JRCC Update

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The Real Estate Committee met on June 21 to discuss next steps for the EDA parcels in James River Commerce Center. The Committee agreed to pursue updated conceptual plans for the Virtual Building site and staff will arrange for bids. ED Staff also met with Planning staff to better understand implications of development proffers. Based on recent discussions, the priority tracking sheet has been updated (attached). The mowing contract, previously approved by the EDA, was finalized with JSG and the property was first mowed in June. No trespassing and no dumping signs were also ordered and are being installed by General Services. At its June meeting, the EDA approved the proposal by VHB to develop a drainage improvement plan for all three parcels in EDA ownership. The Purchase Order for this proposal was prepared by staff and awaits approval by Purchasing. VHB should be able to commence work in July.

**ATTACHMENTS:**

	Description	Type
☐	Priorities Spreadsheet for Parcels A, B, C, & D	Exhibit
☐	Draft Minutes from Real Estate Holdings Committee Meeting on June 21, 2018	Minutes

**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Fellows, Teresa	Approved	7/9/2018 - 5:02 PM

### EDA/JCC Parcels ABCD Project Management

PARCEL	TASK	PRIORITY	STATUS UPDATE	START DATE	END DATE	Est. Cost	NARRATIVE
<b>A</b>	Topo Survey	3		1-Aug-18	TBD	\$22,000	Needed to prepare new and updated site plan.
<b>A</b>	Purchase Wetland Bank Credit	4	Dependent on priority #3	1-Sep-18	TBD	\$6,000	This is a critical and necessary step to mitigate the impacts of the construction of a proposed shell building.
<b>A</b>	Amend Architectural Plans	5	Dependent on priority #3	1-Dec-18	TBD	\$150,000	This will account for additional ceiling height, dock doors, etc. reflecting current market demands and will show up to 150,000 square feet.
<b>A</b>	Geotechnical Study	6	Dependent on priorities #3 & #5			\$3,500	Involves a detailed investigation of the soil. This is a critical step prior to any form of construction.
<b>A</b>	Final Site Plan Amendment	7	Work with Planning to "Fast Track"	1-Feb-19	TBD	\$28,000	Presents final vision of what the future building could look like.
<b>A</b>	Sanitary Sewer Capacity Study	8	Applies to all 4 parcels	TBD	TBD	\$10,000	This study is critical for prospective development in understanding the cost of each parcel's infrastructure needs. This study will look at all four parcels A, B, C & D. The Real Estate Committee has decided to table this until there is better handle on total developable area and/or and end user for the site.
<b>A</b>	LDP, RFP for Public/Private Partnership	9		TBD	TBD	\$0	Public/Private partnerships are always preferable. This process helps gauge interest in a proposed shell building. All of the above items must be performed prior to the RFP.
<b>A</b>	Preliminary Site Work and Grading	10		TBD	TBD	\$135,000	This is to prepare for vertical construction and makes the site its most marketable to a prospective developer, with or without a building.
<b>B</b>	Drainage Improvements plan	1	Received Proposal	1-Jun-18	Aug 1 2018	\$7,500	In a recent meeting with site consultants, it was determined there are drainage issues on Parcels B, C, and D from prior development in the area. An additional line item will still need to be included to address the installation of drainage improvements.
<b>B</b>	Sanitary Sewer Capacity Study	8	Applies to all 4 parcels	2-Jul-18	1-Dec-18	\$0	The cost of this study is covered in the budget for parcel A.

**EDA/JCC Parcels ABCD Project Management**

<b>PARCEL</b>	<b>TASK</b>	<b>PRIORITY</b>	<b>STATUS UPDATE</b>	<b>START DATE</b>	<b>END DATE</b>	<b>Est. Cost</b>	<b>NARRATIVE</b>
<b>B</b>	Environmental Phase I & II, Cultural Resource Study	11	Dependent on the completion of drainage improvements	TBD	TBD	\$0	This study is necessary to determine developable areas and to identify unknown development challenges.
<b>B</b>	Delineate Wetlands & Pursue Amy Corp Permit	12	Working with Consultant	TBD	TBD	\$10,000	This will be a reconfiguration of an expired delineation. This project confirms where wetlands are located on the parcel, which ultimately helps to determine the total developable area. This permit will last for five years.
<b>B</b>	Development Concepts Study/ Master Plan	13	Dependent on completion of #12	TBD	TBD	\$50,000	In order to market the site accordingly, it is necessary to determine what the building size and layout will look like. Therefore the parcel needs to be Master Planned with Developmental Concepts for easy review for potential developers or prospective companies. This study will cover parcels B, C, and D.

<b>C</b>	Drainage Improvements plan	1	Received Proposal	1-Jun-18	Aug 1 2018	\$0	In a recent meeting with site consultants, it was determined there are drainage issues on Parcels B, C, and D from prior development in the area. An additional line item will still need to be included to address the installation of drainage improvements. Cost are included under Parcel B.
<b>C</b>	Sanitary Sewer Capacity Study	8	Applies to all 4 parcels	2-Jul-18	1-Dec-18	\$0	The cost of this study is covered in the budget for parcel A.
<b>C</b>	Environmental Phase I & II, Cultural Resource Study	11	Dependent on the completion of drainage improvements	TBD	TBD	\$0	This study is necessary to determine developable areas and to identify unknown development challenges.
<b>C</b>	Delineate Wetlands Study	12	Part 1: Delineation Part 2: Army Corp	TBD	TBD	\$15,000	This steps confirms that wetlands are on the site and is necessary to determine developable areas. This study will review parcels C & D.
<b>C</b>	Development Concepts Study/ Master Plan	13	Dependent on completion of #12	TBD	TBD	\$0	The cost for this study is covered in the budget of parcel B.

**EDA/JCC Parcels ABCD Project Management**

PARCEL	TASK	PRIORITY	STATUS UPDATE	START DATE	END DATE	Est. Cost	NARRATIVE
<b>D</b>	Drainage Improvements plan	1	Received Proposal	1-Jun-18	Aug 1 2018	\$0	In a recent meeting with site consultants, it was determined there are drainage issues on Parcels B, C, and D from prior development in the area. An additional line item will still need to be included to address the installation of drainage improvements. Cost are included under Parcel B.
<b>D</b>	Sanitary Sewer Capacity Study	8	Applies to all 4 parcels	2-Jul-18	1-Dec-18	\$0	The cost of this study is covered in the budget for parcel A.
<b>D</b>	Environmental Phase I & II, Cultural Resource Study	11	Dependent on the completion of drainage improvements	TBD	TBD	\$0	This study is necessary to determine developable areas and to identify unknown development challenges.
<b>D</b>	Delineate Wetlands	12	Part 1: Delineation Part 2: Army Corp	TBD	TBD	\$0	This cost of this study is covered in the budget of parcel C.
<b>D</b>	Development Concepts Study/ Master Plan	13	Dependent on completion of #12	TBD	TBD	\$0	The cost for this study is covered in the budget of parcel B.

<b>JRCC</b>	Fiber Installation	TBD		TBD	TBD	\$160,000	Staff has received some initial cost estimates from Lumos for the Fiber Installation.
<b>JRCC</b>	Rt 60 Stoplight and Intersection Improvements	TBD		TBD	TBD	\$250,000	Staff met with Planning to discuss proffers that require a stoplight and potential other intersection improvements on Rt 60 when certain thresholds were met. It was determined that the thresholds have not been met for further evaluation which includes 750,000 SF of built space.

<b>A</b>	Parcel A Estimated Cost					\$354,500	
<b>B</b>	Parcel B Estimated Cost					\$67,500	
<b>C</b>	Parcel C Estimated Cost					\$15,000	
<b>D</b>	Parcel D Estimated Cost					\$0	
<b>JRCC</b>	JRCC Park Improvements Estimated Cost					\$410,000	
	<b>PARCELS A, B, C, D TOTAL COSTS</b>					<b>\$847,000</b>	

**EDA Real Estate Holdings Committee**  
**DRAFT Meeting Minutes - June 21, 2018**

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**I. Call to Order**

Mr. Odle called the meeting to order at 8:32 a.m.

**II. Roll Call**

Robin Bledsoe  
Robin Carson  
Christopher Odle, Committee Chair

Amy B. Jordan, EDA Secretary  
Teresa J. Fellows, EDA Recording Secretary  
Kate Sipes, Assistant Director, Office of Economic Development

**III. Committee Discussion**

Ms. Jordan began the discussion by updating the Committee on the stage of each of the parcels owned by the Authority in the James River Commerce Center (JRCC).

Mr. Odle asked about the status of fiber running to the JRCC. He asked if easements should be set aside while working on the completion of Columbia Drive.

Ms. Jordan stated that staff has received quotes for installing fiber to the park, and that is probably something that should be added to the Priorities Spreadsheet. She stated that the installer said it could be done in four to six months, as they already have the route set up, but it will be more cost effective if there is a user in mind. She believes it should be listed under Parcel A on the Priorities with a user being the trigger.

Mr. Odle stated that prior to turning over roads to VDOT, routes and easements should already be established and agreed to so that we do not have to go back and do it later.

Ms. Jordan discussed the possible routes of getting fiber to JRCC and the quotes associated with each possibility.

Ms. Jordan also noted that she met with the Planning Department last week to discuss the JRCC rezoning and the proffers associated with the rezoning. In those proffers, there is a trigger for a stoplight at the intersection of Route 60 and Endeavor Drive coming into the park. She stated that she met with Mr. Porter as well and believes this is a project that needs to put into the Capital Improvement Plan (CIP) as soon as possible. There was some discussion of whether or not to extend the current streetscape plan, which stops at James River Elementary, on to the JRCC Park. Ms. Jordan believes that the completed square footage trigger is almost upon us for having to build the traffic light.

Ms. Bledsoe stated just to be clear, because we own the property we now are responsible for the traffic light.

Ms. Jordan stated technically that responsibility came with the parcels that were purchased from the Colonial Williamsburg Foundation.

General discussion ensued about the connectivity between JRCC and Greenmount Industrial Park and the benefits of multipurpose trails versus sidewalks.

Ms. Jordan stated that additional conversations need to be had with Planning about the traffic light and potential streetscape combination; and the traffic light necessity needs to be added to the Priorities Spreadsheet under Parcel A because the process needs to get started.

Ms. Jordan gave the Committee a more in depth update on the drainage improvements necessary on the three lower parcels. The different efforts to clear the parcels over the years were not graded properly and has caused more harm than good. If we can fix the drainage issues and get the water to flow back to the BMP, it will add developable acreage to the sites.

Ms. Carson asked if the contract with VHB is a quick fix or is it a long term solution.

Ms. Jordan stated that VHB is working to fix the drainage for good, but it may be another year before the land dries out and we are able to move forward with getting it pad ready. She stated that the back portion of parcel B is not too bad.

General ensued regarding the BASF property and potentially getting connectivity access with BASF Drive.

Ms. Jordan stated that we could go ahead and pursue some concepts for the back portion of parcels B and C, but we need to figure out how to get some connectivity back there.

Ms. Carson clarified that once Columbia Drive is done, that parcel A is pretty much done and ready to be developed.

Ms. Jordan stated correct. While focusing on parcel A, we can be fixing these other issues on parcels B, C, and D.

The question was raised about the status of the archeological site shown on parcel C.

Ms. Jordan stated that a similar archeological site is on the Coresix property and they were allowed to pave over the site with asphalt. She said that we will have to have a discussion with Colonial Williamsburg about the archeological site and see what we will be allowed to do. She stated that she could add it to the spreadsheet as a task if the committee thinks it is necessary.

Ms. Carson asked if that would be covered under the Environmental Phase I & II, Cultural Resource Study that is listed on the spreadsheet.

Ms. Jordan stated yes.

Ms. Bledsoe stated that with the drainage improvements, whatever is done needs to be done correctly and permanently, even if that means slowing down another task on the list.

The rest of the Committee agreed.

Ms. Jordan stated that staff recommends revisiting the current site plan for Parcel A. Once Columbia Drive is accepted by VDOT, then Parcel A can be formally subdivided off from

Parcel B. An updated site plan and architectural plan needs to be done. The original site plan only shows an 80,000 square foot building and it does not show the potential for expansion. Staff would like to see the site plan show that the building could be expanded up to 120,000 square feet. If the Committee approves, the next step will be to get quotes to revise the site plan.

Ms. Bledsoe asked Mr. Odle if he had any recommendations for firms to contact and ask for quotes.

Mr. Odle stated VHB would be good, Landmark, Kimley-Horn, Timmons, and AES.

Ms. Jordan stated perhaps staff should contact VHB since they are already doing work out at the site, Timmons since they did the site readiness report on the site, and AES since they are a local firm. She stated that if everyone was agreeable that staff would begin making those contacts for the preliminary site plan amendment.

Ms. Bledsoe stated that in summary, the focus right now is the drainage improvements and then starting the site plan amendment process.

Mr. Odle stated that he would rather see three different conceptual site plans done which would address the different types of uses that could be done on the property. For example, if the user is a standard distribution/warehouse type user, then the building could be situated this way on the site with capacity for trucks. On the other hand, if the user is a cross stock user, then the building would need to move to the center of the site with loading and unloading on each face. Finally a manufacturer, with more employee parking and less truck access, then the building could be situated differently with space for offices.

General discussion ensued about the different building options.

Ms. Jordan stated that through this preliminary site plan process we can have the firm develop three different conceptual plans.

The Committee agreed that was probably the best way to move forward with Parcel A's preliminary site plan.

Ms. Carson asked if the Committee could schedule a standing meeting.

The Committee agreed to set their reoccurring meeting for the 3<sup>rd</sup> Thursday of the month at 8:30 a.m. in the Conference Room located in the Office of Economic Development.

#### **IV. Adjourn**

1. Adjourn until July 19, 2018 at 8:30 a.m., for the next Committee Meeting

A motion to Adjourn was made by Robin Bledsoe, the motion result was Passed.

AYES: 3 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Bledsoe, Carson, Odle

At 10:00 a.m., Mr. Odle adjourned the Committee.



**ITEM SUMMARY**

DATE: 7/12/2018

TO: The Economic Development Authority

FROM: Amy B. Jordan, EDA Secretary

SUBJECT: Director's Report - July 2018

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**ATTACHMENTS:**

	Description	Type
	Report	Cover Memo

**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Fellows, Teresa	Approved	7/10/2018 - 7:09 PM

## MEMORANDUM

DATE: July 12, 2018

TO: The Economic Development Authority

FROM: Amy Jordan, Director of Economic Development

SUBJECT: Director's Report, July 2018

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**Greater Williamsburg Partnership (GWP) Executive Director's Search** – The GWP has received twenty-two qualified applicants for the Executive Director's position. The search committee has reviewed and met to discuss the applications and is now in the process of setting up the first round interviews for later this month. The second round interviews are tentatively scheduled for August 15. This schedule meets the goal of having the permanent full-time Executive Director in place by October 1.

**Workforce Housing Taskforce** – Last fall, Rick Shippey was asked to serve as the EDA's representative member to the Workforce Housing Task Force. However since its formation, the meeting calendar has been set at a time that has been challenging for Mr. Shippey due to work obligations. Mrs. Bledsoe has graciously agreed to fill this position to the taskforce and with her experience on the Planning Commission, will be a tremendous asset to the effort. We appreciate Mr. Shippey's service to the Taskforce this past year.

AJ/nb  
DirReport-071218-mem

**ITEM SUMMARY**

DATE: 7/12/2018

TO: The Economic Development Authority

FROM: Teresa J. Fellows, EDA Recording Secretary

SUBJECT: Adjourn until 8 a.m. on August 9, 2018 for the Regular Meeting

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**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Fellows, Teresa	Approved	7/9/2018 - 4:00 PM